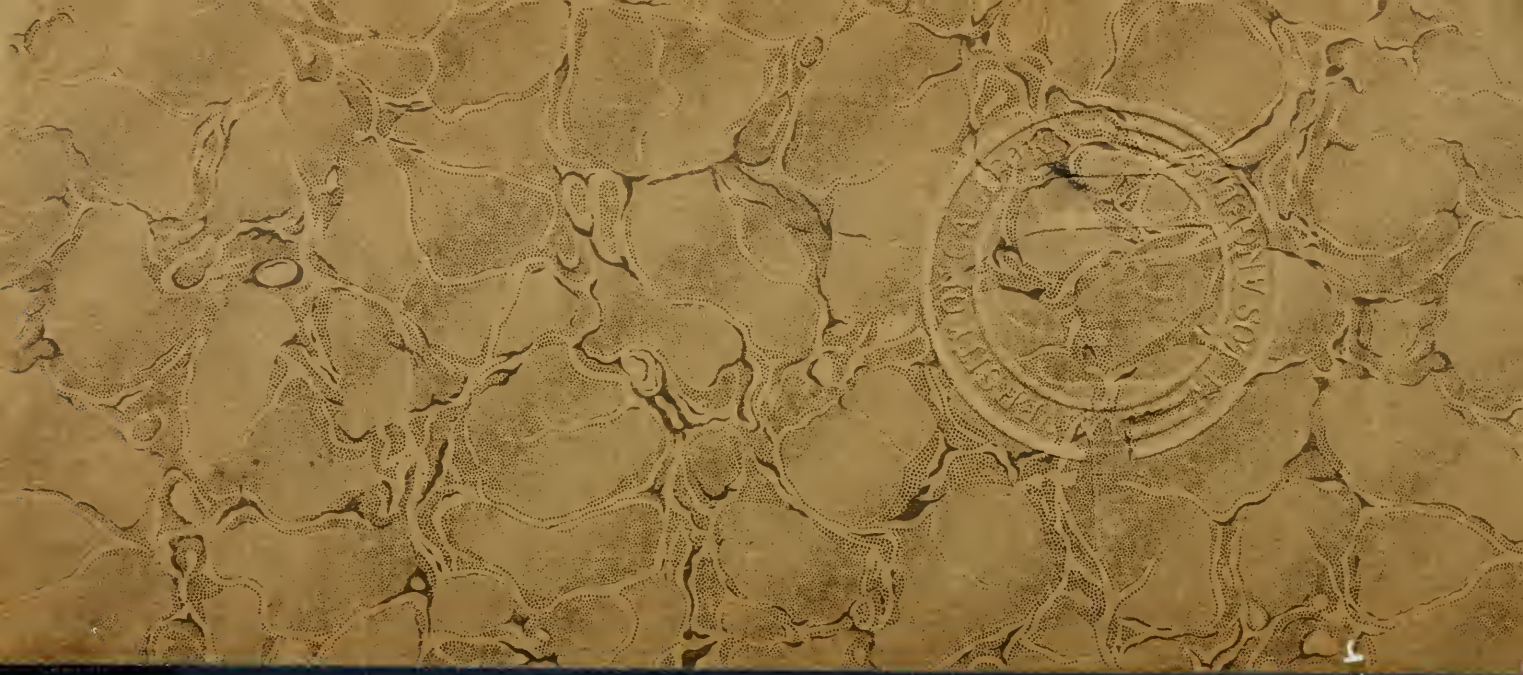

E OF RENT AND MORTGAGE INTEREST...ACT 1920

INCREASE OF
RENT AND MORTGAGE
INTEREST.

EIGHTH EDITION.

THE ACT OF 1920.

By THE EDITORS OF "LAW NOTES."

"LAW NOTES" PUBLISHING OFFICES,
25 & 26, CHANCERY LANE, W.C. 2.

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INCREASE OF RENT

AND

MORTGAGE INTEREST.

BEING

THE INCREASE OF RENT AND MORTGAGE INTEREST (Restrictions) ACT, 1920,

FULLY ANNOTATED, WITH A SEPARATE DIGEST OF CASES DECIDED SINCE THE PASSING OF THE ACT; A NOTE ON THE INCREASE OF MORTGAGE INTEREST; AN INTRODUCTORY SKETCH OF THE EFFECT OF THE ACT; AND APPENDICES GIVING THE RULES MADE UNDER THE ACT AND THE TEXT OF THE REPEALED ACTS.

BY

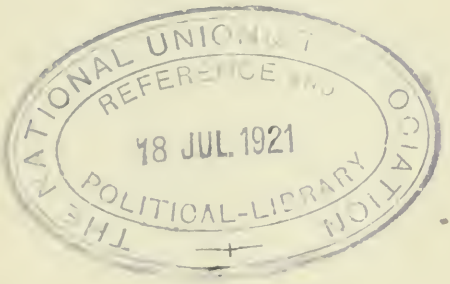
THE EDITORS OF "LAW NOTES."

EIGHTH EDITION.

"LAW NOTES" PUBLISHING OFFICE,

25 & 26, CHANCERY LANE, W.C.

1921.



PREFACE

TO THE EIGHTH EDITION.

We wrote in the Preface to the last edition: "The Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, while it is founded on and very largely embodies the language of earlier statutes, may fairly claim to be treated as new legislation. It contains many fresh provisions, and even where the old wording of the former Acts is incorporated, it is sometimes with such a change in general scheme and arrangement as to produce radically different results. Unless indeed this is borne in mind, familiarity with the now superseded provisions is apt to prove absolutely misleading in dealing with the present Act. For this reason we have, it is believed, incorporated all reported decisions on the former Acts, not only those relevant and authoritative as to this Act, but also those whose authority is now spent or become doubtful, so that opportunity might be taken to indicate where the fact is so."

We have now to add that the present edition has been brought up to date on similar lines, and it is believed, incorporates all the reported cases on the Act or relevant thereto down to date. The cases decided since the passing of the Act are given in a separate Digest, but are also to be found in the text

together with other decisions prior to the present Act but not reported in time for inclusion in the previous edition. The repealed Acts have been given in an Appendix, and sect. 3 (2) of the Administration of Justice Act, 1920—the latest statutory addition to the law on the subject—has been duly included.

Various additions to and alterations in the text throughout have been made in the present edition—it is hoped with advantage. We have endeavoured to anticipate some of the main difficulties likely to confront those concerned with the practical administration of the Act. These questions often involve points of great obscurity on the construction of the Act. We have tried to benefit by the observations of the Court of Appeal in *Remon* v. *City of London Real Property Co.* (36 T. L. R. 869), as to the appropriate method of interpretation, and to place a reasonable interpretation upon the statute where the language possibly admits of such, even if for this purpose it is sometimes necessary to give the wording of the Act a somewhat elastic meaning. We must confess, however, that we have failed to discover even an elastic interpretation of the Act giving satisfactory results on the subject of the increase of mortgage interest. A separate note has been added dealing at some little length with this difficult question.

A. G.
A. W.
H. G. R.
A. C. F.

12th January, 1921.

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BARRETT *v.* MARSHALL.

54 I. R. T. 214.

A tenant whose tenancy was about to expire, agreed with the landlord to give up possession in the event of his not being the purchaser at a forthcoming sale of the property. The property was, by contract dated May 3rd, 1920, sold to another person. Held by the Irish K. B. D. that (1) the purchaser became such before May 20th, 1920, and (2) sect. 5 (1) (c) was inapplicable, there being no notice to quit. (See, however, on the last point, *Gilbert* v. *Jordan*, (1920) W. N. 309, *infra*, p. 3.)

BENABO *v.* HORSELEY.

64 S. J. 727; 36 T. L. R. 859.

A Divisional Court (A. T. Lawrence and Acton, JJ.) held that a tenant did not "continue to pay rent at the agreed rate" within sect. 1 (1) of the 1919 Act by reason of his undertaking to pay the arrears on a date subsequent to the hearing of an ejectment action in the County Court. The Rent Act, 1920, having come into operation meantime pending appeal the case was remitted to the County Court judge to be dealt with on the basis of the more liberal protection of that Act.

BENSUSAN *v.* BUSTARD.

64 S. J. 669; 36 T. L. R. 811.

The Rent Act, 1915, having been successfully pleaded in answer to a County Court ejectment action and no express order made as to costs, a Divisional Court (Lawrence and McCardie, JJ.) held that costs followed the event under sect. 113 of the County Courts Act, 1888, the operation of that section not being affected by Rule 17 of the Increase of Rent and Mortgage Interest (War Restrictions) Rules, 1916 (Rule 16 of the present Rules). The Court ought, however (per McCardie, J.), to consider the question

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The tenant of a house within the Rent Act, 1915, having died in April, 1919, his executor permitted the residuary legatee to continue in possession. The landlord gave notice terminating the tenancy at Christmas, 1919. In an action to recover possession, the County Court judge held that there had been no assent by the executor to the legatee taking the tenancy in satisfaction of rights, and that she was not a tenant and not protected, and that the executor could not claim protection as he was not in occupation. A Divisional Court (Rowlatt and McCardie, JJ.) held that the executor, even though not in physical occupation, was a "tenant" within sect. 2 (1) of the Act of 1915. (See observation on this case, *post*, p. 62.)

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A flat was sublet in breach of covenant. Peterson, J., held that the Act of 1915 did not apply to protect the sublessee. He also held on the facts that it was not a case for relief under the Conveyancing Act, 1892, from forfeiture.

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54 I. L. R. T. 199.

A tenant had occupied premises for twenty-five years. He was a bachelor, but there lived with him his two sisters and two paying guests. The plaintiff's household consisted of himself, his wife and four children, and he occupied another house not so suitable as the one in question, which he reasonably required for his own occupation. It would have been difficult for defendant to find other accommodation. Held by the Irish K. B. D. under sect. 5 (1) (iv) that there would be greater hardship in granting possession than in refusing it.

ECCLESIASTICAL COMMISSIONERS *v.* HILDER.

36 T. L. R. 771; (1920) W. N. 268; 150 L. T. 39.

The defendant was appointed caretaker of certain premises, paying no rent and receiving no remuneration for his services. In ejectment proceedings commenced by specially indorsed writ, held by Avory, J., that even if defendant were a tenant at will, which he doubted, the Act did not protect him. *Semble*, there can be no tenancy within the Act unless a money rent is payable.

ELLEN *v.* GOLDSTEIN.

(1920) W. N. 253.

A building comprising residential accommodation and also a shop and bakehouse and fixtures was let at a rent of 52*l.* per annum. By agreement of the same date as the lease, the tenant agreed that during the term, in consideration of the use of the landlord's fixtures and fittings belonging to and of the goodwill of the baker's business connected with the said premises, he would pay a weekly sum of 1*l.* per week to be recoverable by distress or otherwise as rent in arrear. Russell, J., held on the Act of 1919 (1) that the 1*l.* per week was not rent and could not be added to the rent under the lease for the purpose of taking the rental limit outside the Act; (2) that the Act provided no machinery by which the landlord could recover the shop and fixtures apart from the residential part of the premises.

GILBERT *v.* JORDAN.

(1920) W. N. 309.

The tenant, having written to a purchaser of his house that he proposed to give up possession on the expiration of his tenancy (May 9th, 1920), but that it would be a convenience if he could be allowed to remain till June 24th, 1920, was allowed to remain in possession till then. On the tenant claiming to hold over under the Rent Act, held by Lawrence, J., that (1) the defendant was probably a tenant within the meaning of the Act, but (2) the plaintiff was entitled to possession under sect. 5 (1) (c), for the letter amounted to notice.

MACKWORTH *v.* HELLARD.

(1920) W. N. 377; 150 L. T. 359; 37 T. L. R. 157.

A house was let on terms that the landlord should pay the rates. The rent agreed for was not less than two-thirds of the rateable value of the premises within sect. 12 (7), but became so if the amount payable in rates by the landlord was deducted therefrom. Lush, J., held that such deduction could not be made, and the property was not excluded from the Act.

NEVILE *v.* HARDY.

(1920) W. N. 375; 37 T. L. R. 129; 150 L. T. 342; 65 S. J. 135.

A tenant had taken the second and third floors and basement cellar of premises at Knightsbridge which were within the Act. The landlord endeavouring to recover possession under sect. 5 (1) (d) of the Act, it was held by Peterson, J., (1) that it

must be shown that the landlord reasonably requires the premises in accordance with the clause at the date when possession is asked for, *i.e.*, the hearing, (2) that this may be the case even though pending the hearing the landlord has meantime been compelled to obtain accommodation for himself, &c. elsewhere, (3) that the onus of proof of alternative accommodation is on the landlord.

NICHOLSON *v.* JACKSON.

64 S. J. 699; 36 T. L. R. 854.

Where a landlord of premises within the Act compounds the rates, being allowed a commission by the overseers, he cannot increase the rent by the actual increase in the rates—only by the increase on the sum in fact payable by him after deducting commission. So held by the Court of Appeal (Bankes and Atkin, L.JJ.; Scrutton, L.J., dissenting). Cp. also, *post*, p. 49.

READ *v.* GOATER AND ANOTHER.

(1921) W. N. 19.

A house was let with a stable, yard, coach-house, &c. contiguous, and occupied by the tenants as livery stable keepers. The premises were separately assessed—the rateable value of the house being 7*l.* and of the yard, &c., 48*l.* It was argued that the premises were excluded from the Act under sect. 12 (2) (iii) because the house was let with land other than the site of the house, and the rateable value of that other land was not less than one quarter the rateable value of the house. Held by a Divisional Court (Lush and McCardie, JJ.) that sect. 12 (2) (iii) did not apply, for the yard, &c. was protected by sect. 13, and the "land other than the site of the house" must be land outside the protection of the Act. The fact that the letting of a dwelling-house includes business premises within sect. 13 will therefore never take the case out of the Act, however valuable the business premises as compared with the house.

REEKS *v.* SHELLEY

36 T. L. R. 868.

The tenant of premises within the Act of 1915 whose tenancy expired June 24th, 1920, was in arrear with his rent, and an action was brought by the landlord for possession. The Act of 1920 had been passed before the hearing. Held by Sankey, J., that the Court had a discretion as to possession. An order for possession was, however, made, to be discharged on payment of arrears within three weeks.

REMON *v.* CITY OF LONDON REAL PROPERTY CO.

36 T. L. R. 869.

A tenancy of premises expired on June 24th, 1920. The tenant remained in occupation. On July 2, 1920, the Rent Act of 1920 came into force and was applicable to the premises. On the same day the landlord resumed possession during the tenant's absence. The Court of Appeal (Bankes, Scrutton and Atkin, L.JJ.) held the tenant was protected and was entitled to an injunction restraining the landlord from interference with his possession.

TAYLOR *v.* FAILES.

37 T. L. R. 55.

Judgment for possession having been recovered against a tenant not protected by the previous Acts, the tenant, on the passing of the Act of 1920, the provisions of which would have protected him, applied to have the order rescinded or varied under sect. 5 (3). Held, that the power under this sub-section was discretionary and not obligatory, and the Court was not bound to vary or rescind.

WALLER & SON, LTD. *v.* THOMAS.

(1921) W. N. 19.

The rent of a public-house was less than two-thirds of the gross rateable value and more than two-thirds of the net rateable value. Held by a Divisional Court (Lush and McCardie, JJ.) that the premises were not excluded from the Act by sect. 12 (7), for the rateable value to be taken was the net rateable value. Further, the Court held that the premises, in view of *Epsom Grand Stand Association* v. *Clarke*, (1919) W. N. 70), must be treated as a dwelling-house within section 12 and not business premises within sect. 13.

WOOD *v.* WALLACE.

65 S. J. 135; 150 L. T. 359; 37 T. L. R. 147.

The tenant of a London flat agreed to pay a rent of 100*l.* per annum, "and moreover to pay the sum of 10*s.* weekly for service." It was held by Roche, J., (1) that the rent must be treated as 100*l.* and the 10*s.* per week could not be included so as to bring the rent outside the figure specified in sect. 12 (2) of the Act, (2) that the premises were not excluded from the Act under sect. 12 (2) as being "let at a rent which includes payment in respect of" attendance. The opposite would have been the case had the 10*s.* been included in the rent. (*Douglas* v. *Beeching*, a decision of the same judge, unreported but referred to in this case.)

NOTE ON THE INCREASE OF MORTGAGE INTEREST.

The obscure application of the Rent Act to the increase of mortgage interest is one of the cardinal defects in the Act. The matter is one on which it is impossible to form any confident opinion, and we content ourselves with indicating the possible interpretations of the Act on a matter that can hardly fail before long to be judicially dealt with, and on which nothing except a judicial opinion can be really worth much.

One possible view on the language of the Act is that, apart from the mortgagor's assent, it is not possible to increase the rate of interest at all. The Act, it may be argued, is not an "increase of mortgage interest" Act, but an "increase of mortgage interest *restriction*" Act. Apart from the Act, the mortgagee could not of his own initiative and without the mortgagor's consent increase the rate of interest, and it may be said the Act gives no power of increase—it only prevents increases from being effective which would otherwise be so—makes an increase beyond the permitted limits ineffective even though agreed to. The Act, it may be said in its own words "permits," *i.e.*, does not forbid, without itself authorising.

This view is one that deserves consideration, but it is submitted that it is not the probable one. And one argument against the consent of the mortgagor being necessary is, perhaps, that it is difficult for him to give a valid assent. It has been suggested that the original covenant to pay interest being by deed, any agreement in variation would also have to be by deed. But it is not thought a deed is needed on this ground. In these days, a deed may be discharged by even a parol agreement if made for valuable consideration. (*Steeds* v. *Steeds*, 22 Q. B. D. 537.) The difficulty rather is in finding the valuable consideration. What has the mortgagee to offer in exchange for the mortgagor's promise to pay the higher rate in future? An undertaking not to enforce his security? But the Act already safeguards the mortgagor in this respect. He is safe for the next three years. It is not easy to see what consideration in normal cases there could be. Perhaps the likeliest consideration is to be found in this, that the whole position is so obscure and the rights of the parties so debateable, that the agreement has some claim to be treated as the compromise of disputed rights.

While allowing that there is an arguable case contra, therefore, it is probably the better view on the Act as a whole that no consent by the mortgagor is necessary to make the increase effective.

Presumably, however, even so no increase can be claimed till notice to that effect has been given to the mortgagor (though it is curious that the Act contains no express provision as to notice of increase of mortgage interest).

Assuming that this is so, that no consent by the mortgagor is needed, which is the view we think the Court would struggle to accept, there still remain difficult questions hanging by sects. 7 and 3. Can the mortgagee give notice of increase taking effect at once, or must the notice, at any rate in the usual case (*i.e.*, where there is no breach of covenant or failure to repair by the mortgagor), await before it takes full effect the expiration of due notice calling in the mortgage?

By sect. 7 it is made unlawful for the mortgagee in cases where the Act applies to call in his mortgage or take any steps for exercising any right of foreclosure or sale or for otherwise enforcing his security, unless (1) interest at the permitted rate is 21 days in arrear, or (2) mortgagor is breaking his covenants, or (3) failing to keep the property in repair and keep down prior incumbrances.

By sect. 3 nothing in the Act is to be taken as authorising an increase "except in respect of a period during which but for this Act the security could be enforced."

Now what is meant by "could be enforced"? The most natural interpretation of the expression would be "could be enforced by sale." But this interpretation appears to conflict with sect. 7, which says the mortgagor cannot call in his mortgage or sell as long as the mortgagor observes the conditions enumerated. The mortgagee cannot call in his mortgage or take any steps for exercising a right of foreclosure or sale or for otherwise enforcing his security till interest at the rate permitted is more than twenty-one days in arrear, and the rate permitted must be the old rate without any increase till such time as the mortgagee is in a position to sell. On this showing so long as the mortgagor keeps up his payments of interest at the original rate (unless, which is not likely, he is guilty of breaches of covenant or lets the property fall into disrepair) no increase will ever be possible.

This result is not one that it is probable the Legislature intended. It is necessary therefore to consider whether some other interpretation can be given to "could be enforced" leading to more satisfactory results.

Foreclosure is one method of enforcing the security—it is treated as such in sect. 7 ("exercising any right of foreclosure or sale or *otherwise enforcing*"). But this is a method he is free to adopt as soon as the time for repayment has arrived—usually in practice at the end of the first six months. Taking possession is presumably another method of enforcement—unless there is something

special in the mortgage deed to prevent it, he can take this step as soon as the mortgage is executed. Or "could be enforced" may, perhaps, be read as meaning that the stipulated time for payment has expired and the mortgagor is in default.

But if on sect. 3 we interpret "the security could be enforced" in any of these ways, we seem to empty the section of practical operation. As a result, the section would practically hardly ever prevent an increase. In the absence therefore of any discoverable interpretation which does not either unduly strain the language of the Act or go far to render its provisions nugatory, it is impossible to forecast with any certainty the view which the Courts may ultimately adopt. The matter is one on which the most divergent opinions have been expressed, and it is much to be desired that an amending Act should be passed clearing up the position.

There is a further difficulty beyond that connected with the method of increase, but to some extent involved therewith. Suppose the increase effectively made, what is the result? Is it only that the mortgagor must pay the increase or lose the protection of the Act, or is it also that he is personally liable? And is the increase a charge on the property and to be allowed in foreclosure accounts as against the mortgagor? And, if so, is it also allowable against a puisne incumbrancer? (See *post*, p. 29.) It must be confessed that the present Act affords little material for an answer to questions that are likely to cause trouble in due course, and that might well form the subject of amending legislation.

INTRODUCTION.

Origin and Nature of the Act.

The circumstances which have led to the passing of this legislation are too well known to require discussion. The Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, as amended by subsequent Acts, constituted an attempt to deal with the problems involved, and these earlier Acts are now repealed and replaced by the present Act, which has a much wider scope and deals with many properties not included in the parent provisions. Further, although the Act is modelled on these previous provisions, it introduces innovations of a radical nature and may fairly claim to be considered as altogether new legislation. Decisions on the old Acts will frequently be of assistance in interpreting this Act, but must be applied with caution in construing an Act to which they are not necessarily applicable.

Policy and Duration of the Act.

The Act was passed on July 2nd, 1920, and is in force until the 24th June, 1923, except as regards business premises, the provisions as to which expire on the 24th June, 1921.

The general policy of the Act is to confer security of tenure on the tenants of dwelling-houses and business premises below specified limits of value. They are absolutely protected against increase of rent beyond certain permitted limits. They cannot be ejected except within a narrow range of circumstances, and even in those cases the Court has a discretion as to granting ejectment. Thus if the tenant fails to pay any rent at all the landlord is not necessarily entitled to ejectment or to distrain, distress in the case of tenancies where the Act is

applicable being made impossible unless by leave of the County Court.

As to mortgages of property to which the Act is applicable, just as the landlord is prevented from indefinite increase of his tenant's burdens, so is the landlord's own mortgagee prevented from increasing the rate of interest beyond specified limits and from enforcing his security.

Before dealing with the Act more in detail, one thing is desirable to make clear at the outset. To talk of the landlord "raising the rent" (or the mortgagee "raising the interest") is to employ a convenient phrase. But it is a phrase that may mislead unless it is carefully understood that while the Act restricts the possibility of an increase in rent or interest, it does not at any rate in terms give the landlord (or mortgagee) any power of increase he does not possess apart from the Act. Now, apart from the Act, a landlord could not during an existing tenancy increase the rent by simply giving notice to the tenant that the rent is increased. The tenant would not be liable unless he agreed to pay a higher rent, and if he did not assent to the increase, the landlord's notice raising the rent would be legally quite ineffective. And even now under the Act all that the landlord can do is to bring pressure to bear on the tenant by giving him proper notice to quit, and the effect of the Act is to prevent even this from being effective pressure except within somewhat narrow limits. That is to say, if apart from the Act the landlord would be in a position to turn out the tenant, the Act will now prevent this if the tenant continues to pay his rent plus the increases specified in the Act, and it may possibly in some cases prevent it even if the tenant pays no rent. If the tenant elect to take advantage of the Act and stay on thereunder, he may possibly be under an implied contract to pay the increased rate, though even this is doubtful (*post*, p. 21). But in no case can there be any question of an increase until any existing tenancy has determined. To take a simple illustration: if the tenant have a lease expiring at Michaelmas, 1923, it is impossible to increase the rent till that date without the tenant's consent.

Similarly the mortgagee, quite apart from the Act, cannot raise the mortgage rate of interest without the consent of the

mortgagor. All he can do (and again the Act restricts his powers as to even this) is to bring pressure to bear by calling in his mortgage. It is very important in construing the Act to have in mind throughout this fundamental legal position, which having been clearly the position under the previous Acts, is now expressly recognised for the purposes of this Act (sect. 3, sub-sect. 1). For further discussion of these matters see pp. 8, 21, 22, 29.

Properties within the Act.

The Act extends to England, Scotland and Ireland, and applies to the houses specified in sect. 12 (2).

Roughly it applies to a house let as a separate dwelling where either the August, 1914, rent or the rateable value does not exceed 105*l.* for London, 90*l.* for Scotch, and 78*l.* for other houses.

The criterion is a double one—if either rent or rateable value do not exceed these figures the Act applies.

For purposes of the Act house may include a flat or even a single room if let as a dwelling. Within the same limits as to rent and rateable value the Act also applies to premises used for business, trade, or professional purposes, or for the public service. It must always be remembered in construing the Act that with some minor exceptions reference to "dwelling-house," "house" and "dwelling" includes a reference to business premises (sect. 13).

But there are the following exceptions and qualifications:—

(1) The Act does not apply to properties which were not let on August 3rd, 1914, and have not been let since, till a letting takes place (*post*, p. 51).

(2) To houses *bonâ fide* let at a rent which includes payments in respect of board, attendance, or use of furniture the general provisions of the Act do not apply, though there are certain special provisions as to furnished lets (*post*, p. 16).

(3) The Act does not apply to houses or business premises where land is included in the letting the rateable value of which is not less than one-quarter that of the house or premises (*post*, p. 51).

(4) Where the rent is less than two-thirds the rateable value the Act will not apply till there is a letting at a higher rent (*post*, p. 56).

(5) The Act does not apply to new houses or premises erected after or in course of erection on April 2nd, 1919 (sect. 12 (9), *post*, p. 57).

(6) Or to converted flats (sect. 12 (9), *post*, p. 57).

(7) Or to a letting or tenancy of business premises in a market or fair where the rent or conditions of tenancy are regulated by statute or charter (sect. 13 (2), *post*, p. 58).

Generally it must be remembered that property once within the Act is always within the Act (*post*, p. 56).

Rent and Protection of Tenants.

As in the original Acts, a standard rent is taken, *i.e.*, the rent on August 3rd, 1914, or if the premises were not then let, the last rent they were let at before that date. As to premises never let till after August 3rd, 1914, then the rent at which they were first let.

Where the rent is "progressive," the maximum rent is the standard rent (sect. 12, sub-sect. 1 (a)).

Subject to certain exceptions, any increase of rent after March 25th, 1920, is unenforceable by the landlord. This will be so even though there has been a change of tenants—the landlord cannot increase the rent even on letting to a new tenant. The standard rent is fixed for the house, not for the particular tenancy (*post*, p. 21).

Security to the tenant against any increase in cases where the Act applies is afforded by the following methods:—

(1) By express enactment (sect. 1) that the increase is irrecoverable by the landlord, and if paid by tenant may be recovered by him (sect. 14. See also sect. 19 (3)).

(2) Distress is forbidden except by leave of the Court (sect. 6).

(3) The tenant holding over is expressly confirmed in a

statutory tenancy so that he cannot be ejected without legal proceedings (sect. 15, *post*, p. 61).

(4) By provision (sect. 5) that in no cases is the Court bound to give judgment for possession against the tenant, and has no discretion to grant the order at all except on the grounds following:—

(a) That the tenant is in default in payment of rent or fulfilment of the other obligations of his tenancy (*post*, p. 32).

(b) Nuisance or annoyance to adjoining occupiers or conviction for immoral or for illegal use, or where tenant commits waste, &c. (*post*, p. 32).

(c) That the landlord has sold, relet, &c., after the tenant himself has given notice to quit (*post*, p. 33).

(d) There is alternative accommodation available and the house is reasonably required for occupation by the landlord or his or his tenant's employee, or in the case of business premises they are required by the landlord for business, trade, or professional purposes, or for the public service (sect. 5 (1); sect. 13 (1) (b)). Alternative accommodation, however, need not be shown where (1) the tenancy is of a dwelling-house and was given an employee as such and the employment has ceased. (2) In certain cases where the premises are required for agricultural labourers (*post*, p. 35). (3) Where the landlord gave up his occupation of the premises in consequence of military service. (4) Where the landlord became so before a specified date which varies with circumstances, and greater hardship would arise from refusing than from granting the order (sect. 5, sub-sect. 1).

(e) A local authority or statutory undertaking require the premises and there is alternative accommodation.

(f) The landlord became so after military service, requires the house for personal occupation, and offers the tenant sufficient accommodation in the same house (*post*, p. 35).

(g) The house is required for a former tenant who vacated it for military service.

(h) In the case of business premises, they are required for a scheme of reconstruction or improvement (sect. 13 (1) (e)).

It will be seen that this is much more favourable to the tenant than the original Acts, under which it was a *sine quâ non* that the tenant, to obtain any protection, should be paying at least the rent permitted by the Act and observing the conditions of his tenancy. Now the Court, if it considers it reasonable, may refuse ejectment even if the tenant is in default in these particulars.

The landlord is expressly permitted by the Act to receive rent for a period of three months after notice to quit has expired without thereby prejudicing his claim to possession (*post*, p. 64).

Permitted Increases in Rent.

These are:—

Provided a four weeks' notice (one week's if increase is in respect of rates) has been given (*post*, p. 27), the rent may be increased in excess of the standard rent by the additions following:—

(1) A percentage on the landlord's expenditure on improvements or structural alterations as distinct from repairs. The rate is 6 per cent. on expenditure incurred before the 2nd July, 1920, and 8 per cent. on expenditure after (*post*, p. 22).

(2) An amount corresponding to the increase in rates in cases where the landlord pays these. This increase can now be continued into the next rating period (*post*, pp. 23, 49).

(3) A percentage on the "net rent" as defined by sect. 12 (1) (c) (*post*, pp. 24, 49).

The method of calculating the percentage is a little complicated. First the landlord is given a sort of bonus of 15 per cent. (as regards houses within the previous Acts he only gets the benefit of this to the extent of 5 per cent. for the first year), or, in the cases of business premises, 35 per cent. (the whole of

this increase is allowed forthwith). Then in addition, to cover expenditure on repairs, the landlord gets a further percentage of 25 per cent. where the landlord does the repairs, or if the tenant has agreed to do part of the repairs, such lower percentage as may be determined by agreement or by the County Court.

This percentage therefore works out at 40 per cent. on the net rent (*post*, p. 49), unless the house was already within the previous Acts, when the rate is restricted to 30 per cent. till after a year from the 2nd July, 1920, but, where the tenant is under express liability for part of the repairs, this must be taken into account in reduction of the percentage in manner pointed out by the Act. In the case of business premises the total possible increase under this head is 60 per cent. It is important to note these percentages are not calculated on the actual rent paid by the tenant, or even on the standard rent, but on the "net rent" as defined (*post*, p. 49).

A special power of increasing rent is given to railway companies by sect. 2 (1) (e) (*post*, p. 25).

Miscellaneous Provisions.

Certain methods of evasion are foreseen and guarded against. Thus, if the landlord flings any burden previously borne by himself on the tenant, *e.g.*, if the landlord without raising the amount of the rent requires the tenant to do repairs formerly done by the landlord, this counts as an increase of rent (sect. 2, sub-sect. 3). Nor can the landlord require payment of a fine, premium, &c. in cash or otherwise as a condition of granting or continuing a tenancy, to do so is a summary offence —the tenant will be able to get back anything paid in this way by suing for it or deducting from his rent (sect. 14, see also sect. 19, *post*, p. 69); but this does not prevent a lessor from taking a fine or premium on granting a lease for fourteen years or more (sect. 8 (3)). A similar provision prevents the tenant making a profit (except out of the landlord) on giving up possession (*post*, p. 62). The taking of such a profit is made a summary offence. But the tenant is not prevented by the Act from taking a premium on assigning his tenancy (*post*,

p. 63). A tenant can demand from the landlord a statement as to the standard rent, and failure without reasonable excuse to furnish the statement is a summary offence, as are also certain entries in rent books and the like (*post*, pp. 46, 60).

Effect of the Act as against Purchasers.

The purchaser is in the same position as the vendor from whom he buys, and the tenant is entitled to the same protection against a purchaser as against the original landlord. For further observations as to the rights of purchasers see *post*, pp. 37, 46, 50.

Sub-tenants and Assignees of a Lease.

The Act makes clear that a sub-tenant is entitled to protection equally with the tenant (see *post*, pp. 38, 50). The position of persons to whom the tenant has assigned is discussed *post*, p. 50.

Furnished Dwelling-houses.

The general provisions of the Acts have no application to the letting of furnished dwelling-houses. Thus, the restrictions on the landlord's power of ejectment have no application, so that no additional security of tenure is given the tenant of a furnished house, nor does the Act affect a mortgage of such a house. But sect. 9 of the Act makes certain provisions as to the rents in respect of furnished dwelling-houses, providing that, while the tenancy or sub-tenancy (*post*, p. 50) continues, rent showing more than 25 per cent. increase (not on the rent, but on the "profits" as compared with the "normal profit" from a similar letting in the year ending August 3rd, 1914, may be declared irrecoverable by the County Court. This, however, is only so where the rent or rateable value of the house would bring it within the Acts if unfurnished. Exorbitant charges for furnished letting are for the first time made a criminal offence (sect. 10, *post*, p. 46).

These provisions as to furnished lets do not apply to business premises, and the Acts have no application of any sort to lodgers.

Mortgages.

Mortgages to which the Act is applicable.—The Act applies to mortgages comprising one or more dwelling-houses or business premises to which the Act is applicable, whether the mortgaged property is wholly or merely partly of that character, except:—

(1) Mortgages where other land is also included, if the rateable value of the dwelling-house is less than one-tenth the rateable value of the whole of the land comprised in the mortgage (sect. 12, sub-sect. 4).

(2) Equitable charges by deposit of title-deeds or otherwise.

(3) Mortgages created after the 1st July, 1920.

(4) Mortgages of ground rents (sect. 12, sub-sect. 7).

It must be carefully noted that the provisions of the Act as to mortgages only apply where the property is property to which the Act is applicable. There is, therefore, no question of the mortgagee's powers being restricted simply because, *e.g.*, the rateable value of the property is under 78*l.* The Act will only affect the mortgage provided the property is let as a separate dwelling, or was so let at August 3rd, 1914, or any subsequent date, or provided the property falls within the Act as being let as business premises (see sect. 12 4, *post*, p. 53).

The standard rate of interest.—The Act fixes a standard rate of interest, viz., the rate payable on August 3rd, 1914, or if the mortgage was created since that date the original rate of interest (sect. 12, sub-sect. 1 (b)), the mortgagee being prevented from raising the rate of interest above the standard rate, except within specified limits, and any agreement by the mortgagor to pay the higher rate being unenforceable (sects. 1 and 4). It is to be observed that a radical distinction exists between standard rent and standard interest. As already pointed out, the standard rent is fixed for the house, not simply for a particular tenancy—it will govern all future tenancies of the property. The standard rate of interest, on the other hand, is a standard for that particular mortgage and will not affect other mortgages of the same property.

Permitted increase of mortgage interest.—Mortgage interest can be increased by 1 per cent. in excess of the standard rate up to a limit of 6½ per cent. As to houses within the repealed Acts the increase must not exceed ½ per cent. till the 2nd July, 1921 (*post*, p. 28). Hitherto no increase has been possible in respect of mortgages on 1915 Act houses, and as to 1919 Act houses the increase has been restricted to ½ per cent. Where this increase has already taken place no further increase is possible till the 2nd July, 1921, when a further ½ per cent. can be added. For further remarks on questions arising as to this subject, see *ante*, pp. 6, 7, 8, and *post*, p. 29.

Restriction on mortgagee's powers.—A mortgagee under a mortgage to which the Act applies may not during the continuance of the Act call in his mortgage or foreclose or sell or take other steps to enforce his security or to recover the principal, unless interest at the rate permitted by the Act is twenty-one days in arrear or the mortgagor is breaking his covenants or letting the property get into disrepair or not making payments falling due under prior incumbrances (sect. 7).

But this provision does not apply to mortgages repayable by instalments spread over not less than ten years. Nor does it prevent a mortgagee from exercising his power of sale when he was in possession on the 25th March, 1920, or where he does so with the mortgagor's consent, or where the mortgaged property is leasehold and the mortgagee satisfies the County Court that the security is seriously diminishing in value or otherwise in jeopardy and that it is reasonable to call it in.

And the provision of course does not apply to mortgages outside the Act, *e.g.*, equitable charges by deposit or mortgages of ground rents or mortgages created after the 1st July, 1920 (sect. 12, sub-sects. 4 and 7). It must be remembered, however, that the Courts (Emergency Powers) Act, 1914, applies to all mortgages created before August 4th, 1914, and, where the mortgagor is an officer or man in His Majesty's Forces, or only demobbed within the last six months (War Emergency Laws Continuance Act, 1920), to mortgages created after that date but before April 11th, 1916 (Courts (Emergency Powers) (Amendment) Act, 1916, s. 1), or before

the mortgagor joined His Majesty's Forces, *i.e.*, actually joined up (Courts (Emergency Powers) Act, 1917, s. 8; *Re A Debtor*, 35 T. L. R. 58)), and makes previous application to the Court necessary before the mortgagee exercises many of his remedies.

Provisions as to Rating.

The increase of rent permitted by this Act is not to take a house outside the existing provisions as to compounding: this is effected by sect. 16. The Act also contains provisions as to the rating of newly-erected houses (sect. 12 (9)).

Effect of the Act on the repealed Provisions.

See hereon, *post*, pp. 20, 42, 69.
For houses to which the repealed Acts applied, see p. 70.

The Housing, Town Planning, etc. Acts.

By sect. 35 of the Housing, Town Planning, etc. Act, 1919, nothing in the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, or the amending Acts is to affect the provisions of sect. 17 of the Housing, Town Planning, etc. Act, 1909 (which provisions provide for recovery from a tenant of premises in respect of which a closing order has been made), or prevent a local authority from obtaining possession of any house required, for the exercise of their powers under the Housing Acts. Sect. 35 appears equally to apply to the present Act. (Interpretation Act, 1889, s. 38 (1).)

Administration of Justice Act, 1920.

By sect. 3 (2) of this Act, "notwithstanding anything in any Act it shall not be lawful for any party in a County Court or other civil Court of inferior jurisdiction to require any action or other matter arising under the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, to be tried with a jury.

INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920.

10 & 11 GEO. 5, c. 17.

An Act to consolidate and amend the Law with respect to the increase of rent and recovery of possession of premises in certain cases, and the increase of the rate of interest on, and the calling in of securities on such premises, and for purposes in connection therewith. [2nd July, 1920.]

RESTRICTIONS ON INCREASE OF RENT AND MORTGAGE INTEREST.

1. *Restriction on increasing rent and mortgage interest.*—Subject to the provisions of this Act, where the rent of any dwelling-house to which this Act applies, or the rate of interest on a mortgage to which this Act applies, has been, since the twenty-fifth day of March nineteen hundred and twenty, or is hereafter, increased, then, if the increased rent or the increased rate of interest exceeds by more than the amount permitted under this Act the standard rent or standard rate of interest, the amount of such excess shall, notwithstanding any agreement to the contrary, be irrecoverable from the tenant or the mortgagor, as the case may be:

As to increase of rent or interest, see remarks, *ante*, p. 10. This section avoids an agreement for excessive increase of rent or interest accruing due after March 25th, 1920. As regards houses which were within the previous Acts, the apparent effect of sect. 19 (3) is practically to substitute for March 25th, 1920, the date August 3rd, 1914, in respect of houses which fell within the Act of 1915, and 25th December, 1918, in respect of 1919 Act houses (see *post*, p. 69).

Under this provision, if the landlord gave notice to the yearly tenant that the rent was raised, but did nothing to determine the existing tenancy and the tenant refused to assent, the tenant never became liable for the increase (cp. *Farrell* v. *Boland* (1918), 52 I. L. T. 216)

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It is the date when the increase comes into effect (it was left open whether this is the date when the new rent begins to run, or the first date when the new rent becomes payable), and not the date of the agreement to make the increase, which is material. Thus, if by an agreement made in January, 1920, a tenant of a house let at 100*l.* agreed with the landlord to continue the tenancy till 1922 at a rent of 100*l.* till January, 1921, and then till 1922 at a rent of 150*l.*, the increased rent, except so far as permitted by this Act, will be irrecoverable (*Goldsmith* v. *Orr*, (1920) W. N. 250; see also sect. 4, *post*). The case does not come within sect. 12 (1) (a) as being a progressive rent (*ibid.*).

The clause applies to new tenants as to old; the landlord cannot raise the rent even on re-letting. The standard rent is fixed for the house, not the particular tenant (*King* v. *York*, (1919) W. N. 59).

As to "dwelling-house," "standard rent," "standard rate of interest," "tenant," "landlord," "mortgagor," "mortgagee," see sect. 12, *post*, and as to the right to recover overpaid rent or interest, see sect. 14, *post*.

As to business premises, see sect. 13.

Provided that, where a landlord or mortgagee has increased the rent of any such dwelling-house or the rate of interest on any such mortgage since the said date, but before the passing of this Act, he may cancel such increase and repay any amount paid by virtue thereof, and in that case the rent or rate shall not be deemed to have been increased since that date.

"Passing of this Act," *i.e.*, 2nd July, 1920. Since the landlord is liable to refund anyhow (sect. 14), this proviso seems to have little effect.

2. *Permitted increases in rent.*—(1) The amount by which the increased rent of a dwelling-house to which this Act applies may exceed the standard rent shall, subject to the provisions of this Act, be as follows, that is to say:—

"May exceed."—The language is purely permissive. It is not altogether clear, therefore, whether the result is (1) that an agreement by the tenant or mortgagor to the increase is effective within the specified limits, but any increase apart from agreement is ineffective even to deprive the tenant or mortgagor who fails to pay it of the protection under the Act, or (2) that the tenant or mortgagor, unless he pays the increase (agreed to or not), loses the full benefit of protection conferred by sect. 5, on the ground that in failing to pay the increase he has failed to pay rent "lawfully due." The former view is consistent with the language. The tenant can hardly be personally liable for the increases apart from agreement or imposition of a statutory

liability to pay, which in direct terms at any rate the Act does not contain. If he is not so liable, it is difficult to see that the rent is lawfully due. But the second view above indicated is one that the Court might not improbably struggle to adopt, and is, we think, the probable one. A somewhat similar question arose as to increases under the previous Acts. It was held in Ireland that the rent was increased by service of the notice apart from agreement by the tenant to pay (*Cork Improved Dwellings Co.* v. *Barry*, (1919) 2 Ir. R. 244.) See 38 "Law Notes," p. 211. The incorporation of a statutory form of notice of increase of rent in the present Act renders easier the argument for a statutory liability on the tenant to pay the increase. On the other hand, the argument in this respect as to increase of mortgage interest (for which no statutory form of notice is provided) remains much as under the former Acts.

For the notice which must precede increase of rent, see sect. 3.

(a) Where the landlord has since the fourth day of August nineteen hundred and fourteen incurred, or hereafter incurs, expenditure on the improvement or structural alteration of the dwelling-house (not including expenditure on decoration or repairs), an amount calculated at a rate per annum not exceeding six, or, in the case of such expenditure incurred after the passing of this Act, eight per cent. of the amount so expended:

Provided that the tenant may apply to the county court for an order suspending or reducing such increase on the ground that such expenditure is or was unnecessary in whole or in part, and the court may make an order accordingly:

Having regard to sect. 15 (1), improvements as a rule will only be possible by the tenant's consent.

It will be observed that no increase is possible in respect of ordinary repairs. For the notice which must be given before any increase, see sect. 3, *infra*, p. 27.

The question has been raised, but not decided, whether street improvements would come within this clause. If the owner of a house fails to pave and channel the street fronting after notice, and the local authority thereupon does so and apportions the expense on the frontagers in the usual way, has he incurred expenditure within the clause? It is a matter on which opinions may well differ, but we incline to the negative view.

So, too, putting the drains in order or putting in new cisterns for old or new waterclosets for old would not appear to be a ground for increasing the rent, but to come under the head of "repairs."

(b) An amount not exceeding any increase in the amount for the time being payable by the landlord in respect of rates over the corresponding amount paid in respect of the yearly, half-yearly or other period which included the third day of August nineteen hundred and fourteen, or in the case of a dwelling-house for which no rates were payable in respect of any period which included the said date, the period which included the date on which the rates first became payable thereafter:

There can be added only the increase in the rates actually payable after taking into account the commission allowed by the overseers to the landlord under the provisions (*post*, p. 63) as to compounding (*Nicholson* v. *Jackson*, 36 T. L. R. 854).

An increase in the rates can be added to the rent where it is caused by an increase in the rateable value of the premises, and not only by an increase in the rate itself (*Steel* v. *Mahoney*, (1918) W. N. 253; 34 T. L. R. 327).

As to the amount of the increase which can be made under this sub-section, reference may usefully be made to *W. H. Sulton & Sons* v. *Hollerton*, (1918) W. N. 237. There, the house was in Manchester, where rates are payable for the yearly period June 25 to June 24. The pre-war rent was 8*s.* 9*d.* a week. On January 5, 1918, the landlord served a notice informing the tenant that his rent would be 9*s.* 9*d.* as from February 2, 1918, owing to an increase in rates. From the particulars served with the notice, it appeared that for the year 1915—1916 the rates showed an increase of 12*s.* 2*d.* over 1914—1915; for the year 1916—1917 the increase was 2*s.* 9*d.*, and for 1917—1918 6*s.* 9*d.* The landlord added together the total increase for the three years, making 1*l.* 1*s.* 8*d.*, and divided that amount by 21 (the number of weeks from February 2, 1918, to June 29, 1918), which brought out the sum of 1*s.*, which he sought to add to the weekly rent. It was held by the Court of Appeal on the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1919 (the wording of which was similar in all material respects to this clause) that an increase in the rent could only be made in respect of the increase in the rates on the current rating period. In this case the current rating period was the year ending June 24, 1918, the increase in the rates was 6*s.* 9*d.*, and that must be divided by the number of weeks in the period, viz. 52. The result was the landlord could only increase the rent by about 2*d.* a week.

For the notice which must first be given, and the resulting position, see sect. 3, *infra*, p. 27. It was, on the previous Acts, held in Ireland that the increase is effected by service of the notice apart from any agreement by the tenant to pay (*Cork Improved*

Dwellings Co. v. *Barry*, (1919) 2 Ir. R. 244). In the same case it was held that no increase was possible in respect of rates payable under local Acts incorporating the Towns Improvement Clauses Act, 1847, but on the ground that these are not chargeable on the occupier as the language of the former Act required. The present Act contains no similar words and the decision, therefore, is not to be treated as conclusive of the existing law. Perhaps, however, on the principle of *expressio unius* an argument in favour of the exclusion of such rates even from this Act is to be found in the fact that water rates are expressly included (see sect. 12 (1) (d), *post*, p. 49).

(c) In addition to any such amounts as aforesaid, an amount not exceeding fifteen per centum of the net rent:

Provided that, except in the case of a dwelling-house to which this Act applies but the enactments repealed by this Act did not apply, the amount of such addition shall not, during a period of one year after the passing of this Act, exceed five per cent.:

In the case of business premises, thirty-five per cent. increase is allowed, and the proviso does not apply (sect. 13 (1) (a), *post*, p. 58).

(d) In further addition to any such amounts as aforesaid—

(i) Where the landlord is responsible for the whole of the repairs, an amount not exceeding twenty-five per cent. of the net rent; or

(ii) where the landlord is responsible for part and not the whole of the repairs, such lesser amount as may be agreed, or as may, on the application of the landlord or the tenant, be determined by the county court to be fair and reasonable having regard to such liability:

For a summary of the effect of these two last increases, see *ante*, p. 14

For net rent, see sect. 12 (1) (c).

In this connection it should be noticed that sect. 14 of the Housing, Town Planning, &c. Act, 1909, which applies to houses let at a rent not exceeding in the administrative county of London 40*l*., in a borough or urban district with a population of 50,000 or more, 26*l*., and elsewhere 16*l*., imposes a statutory obligation on the landlord to repair, and cp. sub-sect. (5), *infra*.

(e) In the case of dwelling-houses let by a railway company to persons in the employment of the company, such additional amount, if any, as is required in order to give effect to the agreement dated the first day of March nineteen hundred and twenty, relating to the rates of pay and conditions of employment of certain persons in the employment of railway companies, or any agreement, whether made before or after the passing of this Act, extending or modifying that agreement.

Many railway employees are housed in houses or apartments provided by the railway companies at a nominal cost. The agreement referred to provides that these men shall in future pay rent so as to equalise their remuneration with those who are not so housed. This sub-section enables the companies to alter the terms of such tenancies so as to carry out the agreement.

(2) At any time or times, not being less than three months after the date of any increase permitted by paragraph (d) of the foregoing subsection, the tenant or the sanitary authority may apply to the county court for an order suspending such increase, and also any increase under paragraph (c) of that subsection, on the ground that the house is not in all respects reasonably fit for human habitation, or is otherwise not in a reasonable state of repair.

The court on being satisfied by the production of a certificate of the sanitary authority or otherwise that any such ground as aforesaid is established, and on being further satisfied that the condition of the house is not due to the tenant's neglect or default or breach of express agreement, shall order that the increase be suspended until the court is satisfied, on the report of the sanitary authority or otherwise, that the necessary repairs (other than the repairs, if any, for which the tenant is liable) have been executed, and on the making of such order the increase shall cease to have effect until the court is so satisfied.

It will be noticed that this only applies to certain increases, not to increases in respect of improvements or rates.

(3) Any transfer to a tenant of any burden or liability previously borne by the landlord shall, for the purposes of this

Act, be treated as an alteration of rent, and where, as the result of such a transfer, the terms on which a dwelling-house is held are on the whole less favourable to the tenant than the previous terms, the rent shall be deemed to be increased, whether or not the sum periodically payable by way of rent is increased, and any increase of rent in respect of any transfer to a landlord of any burden or liability previously borne by the tenant where, as the result of such transfer, the terms on which any dwelling-house is held are on the whole not less favourable to the tenant than the previous terms, shall be deemed not to be an increase of rent for the purposes of this Act: Provided that, for the purposes of this section, the rent shall not be deemed to be increased where the liability for rates is transferred from the landlord to the tenant, if a corresponding reduction is made in the rent.

Thus if the landlord lets a house at 34*l.* per annum, undertaking to do repairs, afterwards making a fresh agreement with the tenant whereby the rent remains the same, but the tenant undertook repairs, and in the view of the Court the repairs are equivalent to 10*l.* per annum, the rent is deemed to be increased by that amount. *Semble*, the tenant will be bound by his undertaking to repair, but is only liable for 24*l.* by way of rent.

(4) On any application to a sanitary authority for a certificate or report under this section a fee of one shilling shall be payable, but, if the authority as the result of such application issues such a certificate as aforesaid, the tenant shall be entitled to deduct the fee from any subsequent payment of rent.

(5) For the purposes of this section, the expression "repairs" means any repairs required for the purpose of keeping premises in good and tenantable repair, and any premises in such a state shall be deemed to be in a reasonable state of repair, and the landlord shall be deemed to be responsible for any repairs for which the tenant is under no express liability.

(6) Any question arising under subsection (1), (2) or (3) of this section shall be determined on the application either of the landlord or the tenant by the county court, and the decision of the court shall be final and conclusive.

"Final and conclusive."—See *post*, p. 53.

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3. *Limitation as to permitted increases in rent or interest.*— (1) Nothing in this Act shall be taken to authorise any increase of rent except in respect of a period during which but for this Act the landlord would be entitled to obtain possession, or any increase in the rate of interest on a mortgage except in respect of a period during which, but for this Act, the security could be enforced.

This definitely establishes the principle which we ventured to assert underlay the previous Acts, and which it is of fundamental importance to bear in mind throughout in interpreting this Act. The Act is a "restriction" Act—strictly it gives no power to increase rent or mortgage interest, but limits any powers of the sort that would independently exist. See, however, the first note to sect. 2, *ante*, p. 21.

The meaning of "the security could be enforced" is obscure. The difficult questions connected with increase of mortgage interest are discussed in a separate note on the subject, *ante*, p. 6.

(2) Notwithstanding any agreement to the contrary, where the rent of any dwelling-house to which this Act applies is increased, no such increase shall be due or recoverable until or in respect of any period prior to the expiry of four clear weeks, or, where such increase is on account of an increase in rates, one clear week, after the landlord has served upon the tenant a valid notice in writing of his intention to increase the rent, which notice shall be in the form contained in the First Schedule to this Act, or in a form substantially to the same effect. If a notice served as aforesaid contains any statement or representation which is false or misleading in any material respect, the landlord shall be liable on summary conviction to a fine not exceeding ten pounds unless he proves that the statement was made innocently and without intent to deceive. Where a notice of an increase of rent which at the time was valid has been served on any tenant, the increase may be continued without service of any fresh notice on any subsequent tenant.

The words, "or in respect of any period prior to," prevent the landlord from claiming the increase as from the date of the notice; it might otherwise be suggested that this provision only suspended the remedy and prevented his suing till the time had expired (a view which would find some support in *Steel* v.

Mahoney, (1918) W. N. 253; 34 T. L. R. 327). These words make it clear that the lessor is not only debarred from suing during the four weeks (or one week), but even when the notice is up cannot claim arrears of increase, so to speak, in respect of the period of notice. The increase cannot for any purpose be treated as starting till the period is up. The result was formerly (since under the former Acts four weeks' notice was required for an increase in respect of rates as well as improvements) that a landlord was prevented from recovering the increase in the rate in respect of the four weeks from the termination of the notice (cp. *W. H. Sutton & Sons* v. *Hollerton*, *ante*, p. 23). This grievance was further aggravated when, as was frequently the case, the rate was not made (so that the landlord not knowing of an increase in rates could not meantime give notice) until some weeks after the beginning of the ratal period. If not made for, *e.g.*, six weeks thereafter, the landlord would be unable to recover the increase in respect of the first ten weeks of the period. This grievance the Act to some extent remedies by cutting down the notice required in respect of rates to one week, and by providing in sect. 12 (1) (d), that the landlord may carry over the increase of rate into the next rating period until the new rate is demanded.

It was held under the former Act of 1915 that the notice must be given even if the rent was increased before the introduction of that Act (*Wortley* v. *Mann*, (1916) W. N. 390; *Bridges* v. *Chambers*, (1919) W. N. 34). See also sub-sect. (3), *infra*.

Formal defects in the notice in respect of rates by which the tenant is not in any way damnified were, under the old Act, held not fatal (*Steel* v. *Mahoney* (1918), 34 T. L. R. 328). But those Acts contained no statutory form of notice, and the decision is, perhaps, of doubtful application to the present Act.

(3) A notice served before the passing of this Act of an intention to make any increase of rent which is permissible only by virtue of this Act shall not be deemed to be a valid notice for the purpose of this section.

The Act was passed on the 2nd July, 1920.

4. *Permitted increase in rate of mortgage interest.*—The amount by which the increased rate of interest payable in respect of a mortgage to which this Act applies may exceed the standard rate, shall be an amount not exceeding one per cent. per annum:

Provided that—

(a) the rate shall not be increased so as to exceed six and a half per cent. per annum; and

(b) except in the case of a dwelling-house to which this Act applies but the enactments repealed by this Act did not apply, the increase during a period of one year after the passing of this Act shall not exceed one-half per cent. per annum.

As to increase of mortgage interest, considerations somewhat similar to those connected with increase of rent elsewhere discussed (cp. pp. 10, 21) arise, though it may be the position of tenant and of mortgagor are not identical in this respect. In the first place it must be noted that the Act itself contains no express power to increase interest, and in any case the mortgagee cannot do so unless apart from this Act "the security could be enforced" (sect. 3 (1)). See separate note on the subject of increase of mortgage interest, *ante*, p. 6.

Suppose, however, the circumstances are such that "the security could be enforced" (whatever that expression may mean), if the mortgagee notifies the mortgagor that the interest is increased, but the mortgagor refuses to assent to any increase, it is not clear whether as a result (1) on a strict construction of the language of the Act the proposed increase is quite ineffective and the mortgagee powerless to enforce his mortgage as long as the old rate is still paid, or whether, as the Court might possibly hold, (2) merely that the mortgagor failing to pay the increase loses the protection of the Act. It would appear that, at any rate, whichever view is right, the mortgagor, unless he agrees to the increase, is not personally liable therefor—he could not be sued, nor could the mortgagee debit him with the increase on a sale or on foreclosure proceedings. Mortgagors, till these points are settled, will possibly be prudent in paying the increase under protest.

The principle of *Goldsmith* v. *Orr* (*ante*, p. 21) would appear also to apply to mortgage interest, so that the date of the increase, and not the date of the agreement to pay the increase, is the ruling factor. Thus, where mortgagor has before 25th March, 1920 (or, as to properties which fell within the previous Acts (*post*, p. 70), August 3rd, 1914, or December 25th, 1918), agreed to pay an additional 2 per cent. as from March 25th, 1920, the increase is irrecoverable so far as it exceeds the above limits. As to houses falling within the repealed Acts, the increase permitted is not in addition to one already made under those Acts. If the interest on the mortgage of a 1919 Act house has already been increased by $\frac{1}{2}$ per cent., no further increase is possible till the 2nd July, 1921.

Further Restrictions and Obligations on Landlords and Mortgagees.

5. *Restriction on right to possession.*—(1) No order or judgment for the recovery of possession of any dwelling-house to which this Act applies, or for the ejectment of a tenant therefrom, shall be made or given unless—

It is this sub-section which confers on the tenant the fundamental protection of the Act. The wording in many respects is derived from the earlier Acts, but the effect of the sub-section as a whole is very different and much more favourable to the tenant. For this reason, such decisions as the following have no bearing on the construction of the present Act:—*Stovin* v. *Fairbrass*, 147 L. T. 210; *Stephens* v. *Tatham*, (1919) W. N. 334; *Price* v. *Pritchard*, 147 L. T. 275; and the Irish cases reported 53 I. L. T. at the pages mentioned:—*Hipps, Ltd.* v. *Hughes*, 111; *Sloane* v. *Cooke*, 209; *Sammon* v. *Cawley*, 224; *Gildea* v. *Conway*, 166; and the Scotch case of *Smith* v. *Barclay*, (1920) 1 Scots L. T. 13.

Under this section the tenant or sub-tenant (sect. 12 (1) (f) and (g), *post*, p. 50, see also sub-sect. (5) of this section, *post*, p. 38) of a dwelling-house or business premises to which the Act applies, cannot be turned out except on one of the grounds mentioned in the sub-section, or in the case of business premises the grounds as somewhat modified by sect. 13, *post*, p. 58, and even in these cases the Court is not to grant ejectment unless it thinks it reasonable so to do. Under the former Acts payment of rent plus the permitted increases, and observance of the tenant's covenants, were absolutely essential conditions of protection, even tender of the rent after commencement of proceedings claiming possession being insufficient to secure the benefit of the Act (*Beavis* v. *Carman*, (1920) W. N. 159). There is thus a great difference between the former Acts and this.

Under this Act, although the tenancy has determined and the tenant is not paying the increased rent under this Act, or possibly even not paying any rent at all, the Court is not to eject him unless it thinks it reasonable so to do.

The object of the Legislature is, no doubt, to protect tenants whose income has increased only slightly or not at all since 1914, in respect of whom a Parliamentary Committee advised that the Court should have power to refuse possession and power to reduce the rent. The present section effects the first, and as read with sub-sect. (2) goes some way towards the second.

The present Act, though meantime its provisions are in addition to and not in derogation of the Courts (Emergency Powers) Acts (compare sect. 6), will not improbably outlast these, and in that event will form some sort of substitute for their expired provisions. It may be noted in passing that while the power of

annulling contracts, &c. under the Courts (Emergency Powers) Acts extends to contracts of tenancy (*Boyce* v. *Hill*, (1918) 2 K. B. 616), yet the power is only exerciseable in case of serious hardship directly due to certain specified causes, which do not include the shortage of houses (*Cody* v. *Copland*, 63 S. J. 760). The discretion given to the Court by this section is very wide, little indication being given of what is the criterion of reasonableness. The practical effect of the section in this respect will depend very much on the lines on which the Courts elect to exercise their powers.

In the last edition we said: "It was questioned under the former Acts whether a lessee for a fixed term was protected from having to give up possession at the expiration of his lease, since after determination of his lease he was no longer 'a tenant.' But the opinion that he was protected just as much as a tenant who received notice to quit and refused to give up possession, advanced by us in previous editions, was inferentially adopted by Mr. Justice Greer in *Vernon Investment Association* v. *Welch* (1919), 35 T. L. R. 511. There can, we think, be no doubt that the position is the same under the present Act and that the tenant is protected on the expiration of his lease by effluxion of time as in other cases. In view of sect. 15, *infra*, the argument that he is not a 'tenant' becomes more difficult than ever." It may now be added that in face of *Remon* v. *City of London Real Property Co.*, 36 T. L. R. 869, the argument seems clearly impossible.

The Act, it will be noticed, does not prevent the landlord from giving notice to quit; it merely provides that no order for recovery of possession or for ejectment is to be made. Perhaps in this context it may be worth while to emphasise the fact that this section gives no power to eject a tenant. It only restricts any right to possession which would, apart from it, exist. Thus, a tenant from year to year cannot, *e.g.* be turned out under (d) on the ground that the house is required for personal occupation by the landlord till proper notice (*i.e.*, half a year's notice expiring with the current year of the tenancy) has been given.

Where such notice to quit is given, the effect of acceptance of rent subsequent to the expiration of the notice is dealt with by sect. 16 (3), *post*, p. 64.

This section, subject to clause (c), *infra*, protects the tenant even if he himself gave notice to quit (*Artizans, Labourers and General Dwellings Co., Limited* v. *Whitaker*, (1919) 2 K. B. 301; *Hunt* v. *Bliss*, 36 T. L. R. 74), but it was held on the old Acts that he was in such a case liable for double rent under the Distress for Rent Act, 1737 (*Flannagan* v. *Shaw*, (1920) 3 K. B. 96), overruling the same case in the Court below. In view of sect. 15 of this Act this is probably not now so. Where the landlord gives notice the tenant is protected from liability to double value under the Landlord and Tenant Act, 1730 (*Crook* v. *Whitbread*, 147 L. T. 80).

In deciding whether to give judgment for possession, the Court must consider the circumstances existing not at the date of termi-

nation of the tenancy, but at the date when the order is asked for, *i.e.* the hearing (*Neeld* v. *Hardy*, (1920) W. N. 375; *Harcourt* v. *Lowe*, 35 T. L. R. 255; and *Artizans, &c. Co.* v. *Whitaker*, (1919) 2 K. B. 301).

(a) any rent lawfully due from the tenant has not been paid, or any other obligation of the tenancy (whether under the contract of tenancy or under this Act) so far as the same is consistent with the provisions of this Act has been broken or not performed; or

(a) "Any rent lawfully due . . . not paid, or any other obligation . . . broken."—"Lawfully due," see note to sect. 2 (1), *ante*, p. 22. A tenant holding over in virtue of the Act is not failing to perform an obligation of the tenancy by reason of his lease containing the usual express condition for possession by landlord on termination of the lease (*Artizans, Labourers and General Dwellings Co., Ltd.* v. *Whitaker*, (1919) 2 K. B. 301).

For examples of obligations under the Act, see sect. 16, *post*.

We may again point out that the Act does not authorise possession merely for failure to observe the obligations of the tenancy. It only restricts any right to possession which would have arisen independently. So that no right to possession will arise in such a case unless the lease contains (as it usually will) a proviso for re-entry in such event. Even if there is a proviso for re-entry, however, and proper notice has been given under sect. 14 of the Conveyancing Act, 1881, this sub-section gives a discretion to the Court as to making an order for possession, and therefore overlaps the Conveyancing Act, 1881, s. 14, as to relief from forfeiture for breach of covenant, and the Common Law Procedure Acts as to relief from forfeiture for non-payment of rent. The effect of the combined legislation may in some cases give rise to nice problems.

In virtue of the present Act, the tenant may practically get relief in cases where otherwise relief would be impossible, *e.g.*, breach of covenant against assigning or under-letting will not prevent the Court extending the protection of the Act to the tenant if it thinks fit. Cp., however, *post*, p. 39. And the Court will not necessarily grant possession even if there is a right to recover if the tenant is in default with his rent (*ante*, opening note to this section, and cp. *Rooks* v. *Shelley*, (1920) W. N. 289).

(b) the tenant or any person residing with him has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers, or has been convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose, or the condition of the dwelling-house has, in the opinion of the court,

deteriorated owing to acts of waste by or the neglect or default of the tenant or any such person; or

(b) "The tenant *or any person residing with him* . . . guilty of . . . nuisance . . . or waste."—The italicised words were not in the former Acts, and somewhat enlarge this provision.

(c) the tenant has given notice to quit, and in consequence of that notice the landlord has contracted to sell or let the dwelling-house or has taken any other steps as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession; or

(c) "The tenant has given notice to quit," &c.—This gives statutory effect to the decision on the former Acts of *Green-Price* v. *Webb*, 148 L. T. 158. Cp. also *Hunt* v. *Bliss*, 36 T. L. R. 74. A statement by a tenant whose lease is about to expire that he does not intend to hold over is notice to quit for this purpose (*Gilbert* v. *Jordan*, (1920) W. N. 309; cp., however, *Barrett* v. *Marshall*, 54 I. R. T. 214). In *Hylton* v. *Heal* (at present unreported—see *Daily Telegraph* for January 12th, 1921) it was held that if the tenant has given notice the section operates as against his sublessee.

(d) the dwelling-house is reasonably required by the landlord for occupation as a residence for himself, or for any person bonâ fide residing or to reside with him, or for some person in his whole time employment or in the whole time employment of some tenant from him, and (except as otherwise provided by this subsection) the court is satisfied that alternative accommodation, reasonably equivalent as regards rent and suitability in all respects, is available; or

For the substituted clause in respect of business premises, see sect. 13.

(d) "The dwelling-house is reasonably required by the landlord . . . and alternative . . . accommodation is available."—It should be carefully noted that alternative accommodation is not required in the cases mentioned in the latter part of the subsection, *post*, pp. 35 and 36.

"For some person in his whole time employment."—These words mean a person already in the employ of a landlord or his tenant. It is not enough that the landlord wants the house for a foreman whom he is about to employ (*Rex* v. *Rogers*, *Ex parte Hodson*, (1918) W. N. 128). The words "whole time" override the decision in *Wall* v. *Gibbs*, (1920) W. N. 187, where it was held that the employment need not be exclusive.

"Alternative accommodation *reasonably equivalent as regards rent and suitability in all respects* is available."—Alternative accommodation figured in the former Acts, but without the italicised words. Decisions on the meaning of the expression in those Acts must therefore be treated with caution and not as necessarily applicable to the present Act. Thus, in *Wilcock* v. *Booth*, 149 L. T. 87, the tenancy was of a house and shop. It was held that alternative accommodation was shown though that alternative accommodation had no shop attached. This would not be so under the present Act. In an unreported case of *Copperwheat* v. *Minney* (printed *Copperthwaite, Daily Telegraph* of Nov. 29th, 1919; see 39 Law Notes, pp. 79 and 84), where the landlord was willing, if he could have two rooms in the house, to leave the rest to the tenant, Mr. Justice Darling thought this was a reasonable proposal, and that alternative accommodation might be rooms in the house the tenant is living in. This case also appears to be inapplicable under the present Act. The onus of proof of alternative accommodation is on the landlord (*Nevile* v. *Hardy*, (1920) W. N. 375). This, notwithstanding certain expressions in *Bazalgette* v. *Hampson*, (1920) W. N. 59, which, however, decides no more than that the landlord need not himself tender the alternative accommodation if he can otherwise prove that it exists, as in the case in question he did. In an Irish case (*Kieran* v. *Dunne*, 54 I. L. T. 51) it was said that while the plaintiff may have the onus of proving that there is available alternative accommodation, the defendant has also the onus of proving that such alternative accommodation does not exist; but this cannot be relied on since *Nevile* v. *Hardy* (*ubi sup.*).

In an unreported case of *Nathan* v. *Hart* (*Daily Telegraph*, 5th June, 1919), decided on the old wording, alternative accommodation was said to include "other accommodation, not exactly the same, but similar, within a reasonable distance."

The alternative accommodation must be in the same neighbourhood (*Wilcock* v. *Booth*, 149 L. T. 87; *Nathan* v. *Hart*, *ubi sup.*). In *Bazalgette* v. *Hampson*, (1920) W. N. 59, a decision on the old wording, alternative accommodation was proved where the tenant of a house at Kew could have found accommodation not necessarily at Richmond or Kew but elsewhere in a locality conveniently situate for his work.

If a husband living apart from his wife takes a house for her and the family, alternative accommodation is not shown because the husband is himself living in a house in which, if his wife returned to him, she might also live (*Crutchley* v. *White*, 36 T. L. R. 249).

For cases in which alternative accommodation is unnecessary, see *post*, p. 35.

It will be observed that this clause only applies where the landlord requires the premises for use as a residence, not, *e.g.*, where he desires to occupy the house for business purposes. Owing to the words "*bonâ fide* residing or to reside with him," it would apply where the landlord resides in a house of which he has

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sublet part and desires to resume possession of that portion for the occupation of a grown-up son or daughter coming to live with him.

(e) the landlord is a local authority or a statutory undertaking and the dwelling-house is reasonably required for the purpose of the execution of the statutory duties or powers of the authority or undertaking, and the court is satisfied as aforesaid as respects alternative accommodation; or

For statutory undertaking, see sect. 12 (1) (i), and as to alternative accommodation, *ante*, p. 33.

(f) the landlord became the landlord after service in any of His Majesty's forces during the war and requires the house for his personal occupation and offers the tenant accommodation on reasonable terms in the same dwelling-house, such accommodation being considered by the court as reasonably sufficient in the circumstances; or

"After service"—not necessarily, it is submitted, after demobilisation.

(g) the dwelling-house is required for occupation as a residence by a former tenant thereof who gave up occupation in consequence of his service in any of His Majesty's forces during the war;

This, of course, gives no power to the former tenant to sue—the action must be by the landlord.

and, in any such case as aforesaid, the court considers it reasonable to make such an order or give such judgment.

As to business premises, add clause (h) from sect. 13 (1): "The Court considers it reasonable"—this qualifies the whole sub-section. See the first note to this sub-section.

The existence of alternative accommodation shall not be a condition of an order or judgment on any of the grounds specified in paragraph (d) of this subsection—

(i) where the tenant was in the employment of the landlord or a former landlord, and the dwelling-house was let to him in consequence of that employment and he has ceased to be in that employment; or

(ii) where the court is satisfied by a certificate of the county agricultural committee, or of the Minister of Agriculture and Fisheries pending the formation of such committee, that the dwelling-house is required by the landlord for the occupation of a person engaged on work necessary for the proper working of an agricultural holding; or

(iii) where the landlord gave up the occupation of the dwelling-house in consequence of his service in any of His Majesty's forces during the war; or

(iv) where the landlord became the landlord before the thirtieth day of September nineteen hundred and seventeen, or, in the case of a dwelling-house to which section four of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1919 (8 & 9 Geo. 5, c. 7), applied, became the landlord before the fifth day of March, nineteen hundred and nineteen, or in the case of a dwelling-house to which this Act applies but the enactments repealed by this Act did not apply, became the landlord before the twentieth day of May nineteen hundred and twenty, and in the opinion of the court greater hardship would be caused by refusing an order for possession than by granting it.

(i) This will cover the case, *e.g.*, of a letting to a gardener whose engagement has terminated. Possession may be given if the house is wanted for the new gardener, even though no alternative accommodation exists. But unless there is an actual letting, the Act will be inapplicable and reliance on this provision needless. Thus, a servant employed to take charge of a garage, and while so employed allowed to occupy a dwelling-house adjacent to the garage and belonging to the same owner, is not a tenant and can be ejected, therefore, in any event, and even, *e.g.*, though the premises are not required for occupation by another servant in the owner's employ (*National Steam Car Co.* v. *Barham*, 122 L. T. 315). Cp. *Ecclesiastical Commissioners* v. *Hilder*, 36 T. L. R. 771, where it was said the Act would not apply to a tenant at will paying no rent. Cp. also the judgment of Scrutton, L.J., in *Remon* v. *City of London Real Property Co.*, 36 T. L. R. 869.

The clause does not apply to business premises (sect. 13).

(ii) It may be noted in this context that where before the Corn Production Act, 1917, a farmer deducted 1*s.* a week from his labourer's wages in respect of the occupation of a cottage,

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he is not prevented by this Act from increasing the deduction to 3*s.* a week, inasmuch as the difference of 2*s.* is not deducted by way of rent but as representing a benefit in lieu of cash which for purposes of estimating the minimum wage is to be calculated at 3*s.* (*Baker* v. *Wood*, (1920) W. N. 53).

(iii) This provides for the ejectment of the suitors on Ulysses return from the wars.

(iv) The effect of this is that when the house has been purchased and the purchaser requires it for his own occupation, there must be alternative accommodation unless he bought before the dates named. As to "greater hardship" see *Dowling* v. *Butler*, 54 I. R. T. 199.

Except in the above cases alternative accommodation must be shown if clause (d) is relied on—*Smith* v. *Bridgen*, (1920) W. N. 106, has no application to the present Act. It will be noted that even these cases must also fall within clause (d) above.

(2) At the time of the application for or the making or giving of any order or judgment for the recovery of possession of any such dwelling-house, or for the ejectment of a tenant therefrom, or in the case of any such order or judgment which has been made or given, whether before or after the passing of this Act, and not executed, at any subsequent time, the court may adjourn the application, or stay or suspend execution on any such order or judgment, or postpone the date of possession, for such period or periods as it thinks fit, and subject to such conditions (if any) in regard to payment by the tenant of arrears of rent, rent, or mesne profits and otherwise as the court thinks fit, and, if such conditions are complied with, the court may, if it thinks fit, discharge or rescind any such order or judgment.

This sub-section repeats with slight modifications sect. 1, subsect. (2) of the Increase of Rent, &c. (Amendment) Act, 1919. In *Kelly* v. *White*, *Penn Gaskell* v. *Roberts*, (1920) W. N. 220, it was held on the former Acts that the Court had no power to make an order for possession with "execution stayed as long as the tenant pays rent at the agreed rate" on the ground that the order created a new tenancy of infinite duration, and that the discretion to stay must be exercised judicially, and that while the Increase of Rent, &c. Act, 1915, gave power to grant relief to tenants who paid their rent, the order extended that relief to tenants who did not pay. The relevant provision of the Act, however, corresponding to sub-sect. (2) above, was apparently not called to the Court's attention, while in any case, having regard to the difference in sect. 5 of this Act as compared with the old provisions to which it corresponds, the decision is perhaps of

dubious application to the present Act. No doubt the power to stay execution must be exercised judicially, but an order staying execution indefinitely, if limited to apply only while the present Act is in force, would seem to be within the wording of the sub-section.

(3) Where any order or judgment has been made or given before the passing of this Act, but not executed, and, in the opinion of the court, the order or judgment would not have been made or given if this Act had been in force at the time when such order or judgment was made or given, the court may, on application by the tenant, rescind or vary such order or judgment in such manner as the court may think fit for the purpose of giving effect to this Act.

This repeats the Increase of Rent, &c. Amendment Act, 1919, s. 1 (3). Rescission or variation is discretionary, not obligatory (*Taylor* v. *Faires*, 37 T. L. R. 55).

(4) Notwithstanding anything in section one hundred and forty-three of the County Courts Act, 1888 (51 & 52 Vict. c. 43), or in section one of the Small Tenements Recovery Act, 1838 (1 & 2 Vict. c. 74), every warrant for delivery of possession of, or to enter and give possession of, any dwelling-house to which this Act applies, shall remain in force for three months from the day next after the last day named in the judgment or order for delivery of possession or ejectment, or, in the case of a warrant under the Small Tenements Recovery Act, 1838, from the date of the issue of the warrant, and in either case for such further period or periods, if any, as the court shall from time to time, whether before or after the expiration of such three months, direct.

Under sect. 143 of the County Courts Act, 1888, a warrant for possession, whenever issued, is to bear date on the day succeeding the last day for delivery of possession allowed by the judgment, and shall continue in force for three months from that date and no longer. Under sect. 1 of the Small Tenements Recovery Act, 1838, the warrant for possession must be executed within thirty clear days of that date. This sub-section provides for an extension of these times.

(5) An order or judgment against a tenant for the recovery of possession of any dwelling-house or ejectment therefrom under this section shall not affect the right of any sub-tenant to whom the premises or any part thereof have been lawfully

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sublet before proceedings for recovery of possession or ejectment were commenced, to retain possession under this section, or be in any way operative against any such sub-tenant.

Cp. sect. 12 (1) (f) and (g). There was no express provision under the previous Acts, but in *Cottell* v. *Baker*, (1920) W. N. 46, where a tenant of premises not falling within the Acts sublet part of the premises as a dwelling-house at a rent which came within the Acts, they were held to protect the underlessee against the superior landlord. *A fortiori* under the present Act this is so. Under the old Acts, however, it was necessary that the underlease should not be a breach of covenant (*Dick* v. *Jacques*, 36 L. T. 773; *Cottell* v. *Baker*, *ubi sup.*). (This last case also decides, following earlier authority, that a sublease of part is not a breach of covenant against subletting the whole premises.) Under this section the words "lawfully sublet" seem to point to a similar result, though in terms the section only deals with the effect of a judgment against the sublessor, and even a sublessee on breach of covenant is within the words of sect. 12 (1) (f) and (g). It must be remembered that under the Conveyancing Act, 1892, the sublessee may possibly be relieved from the forfeiture (*Hurd* v. *Whaley*, (1918) 1 K. B. 448, and cases there cited). Cp. also as to this section, *Murphy* v. *Porter*, 53 I. L. T. 151.

(6) Where a landlord has obtained an order or judgment for possession or ejectment under this section on the ground that he requires a dwelling-house for his own occupation, and it is subsequently made to appear to the court that the order was obtained by misrepresentation or the concealment of material facts, the court may order the landlord to pay to the former tenant such sum as appears sufficient as compensation for damage or loss sustained by that tenant as the result of the order or judgment.

6. *Restriction on levy of distress for rent.*—No distress for the rent of any dwelling-house to which this Act applies shall be levied except with the leave of the county court, and the court shall, with respect to any application for such leave, have the same or similar powers with respect to adjournment, stay, suspension, postponement and otherwise as are conferred by the last preceding section of this Act in relation to applications for the recovery of possession:

This is a new provision intended to protect the tenant hard hit by the war (cp. *ante*, p. 30). The Court will have the same powers in respect of applications for leave to distrain as are mentioned in sect. 5 (2), *ante*.

Provided that this section shall not apply to distress levied under section one hundred and sixty of the County Courts Act, 1888.

Sect. 160 of the County Courts Act, 1888, provides in substance that on a County Court execution, if the landlord gives notice to the bailiff that rent is in arrear, the bailiff is to combine distress with the execution, and before payment to the execution creditor deduct for the landlord's benefit four weeks' rent in the case of weekly lettings, rent for two terms of payment if the letting is for less than a year, and rent for one year in other cases.

The provisions of this section shall be in addition to and not in derogation of any of the provisions of the Courts (Emergency Powers) Act, 1914 (4 & 5 Geo. 5, c. 78), or any Act amending or extending the same, except so far as those provisions are repealed by this Act.

Of the provisions in question the only ones repealed by this Act are sects. 4, 5 and 7 of the Courts (Emergency Powers) Act, 1917, which were amendments of the provisions of the former Increase of Rent, &c. Acts, and are now superseded by the provisions of the present Act.

7. *Restriction on calling in of mortgages.*—It shall not be lawful for any mortgagee under a mortgage to which this Act applies, so long as—

(a) interest at the rate permitted under this Act is paid and is not more than twenty-one days in arrear; and

(b) the covenants by the mortgagor (other than the covenant for the repayment of the principal money secured) are performed and observed; and

(c) the mortgagor keeps the property in a proper state of repair and pays all interest and instalments of principal recoverable under any prior encumbrance,

to call in his mortgage or to take any steps for exercising any right of foreclosure or sale, or for otherwise enforcing his security or for recovering the principal money thereby secured:

To get the protection of this provision the mortgagor must himself pay the interest and keep the property in repair. The retention of rents by a mortgagee in possession is not a payment of interest within this provision, nor will the property be deemed to be repaired because the mortgagee might have repaired it out of the rents (*Walters* v. *White*, 33 T. L. R. 154).

The language of this sub-section is very wide. In cases where

it applies a notice calling in a mortgage will be inoperative to enable mortgagee to sell, and any purported sale void. The mortgagor might, no doubt, obtain a declaration that the notice is invalid, and with an order for costs, but there is no need to take proceedings. A purchaser from the mortgagee would not get a good title if the mortgagor had fulfilled the conditions set out in the section. And a mortgagee under this sub-section cannot even commence foreclosure proceedings, or continue proceedings begun before the Act was introduced (*Welby* v. *Parker*, (1916) 2 Ch. 1), or sue on the covenant for repayment (see, *e.g. London County and Westminster Bank* v. *Tompkins, post*, p. 54). The sub-section also prevents the mortgagee from taking possession, and he cannot eject a tenant of the mortgagor though the tenancy is void as against the mortgagee (*Martin* v. *Watson*, (1919) 2 Ir. R. 332; see now also sect. 12 (1) (f)). And it may prevent the appointment of a receiver, though such an appointment is not within the mischief of the Act, and the point is arguable. It is not of great importance, since the happening of an event to make the power of appointing a receiver exerciseable under the Conveyancing Act will nearly always take the case out of this sub-section altogether.

Unlike the Courts (Emergency Powers) Act, 1914, s. 1, which, except in the case of officers and men of His Majesty's Forces (including the recently demobbed—War Emergency (Laws Continuance) Act, 1920), only applies to mortgages created before the war, this section applies to mortgages created at any time before the 2nd July, 1920. When a mortgage comes within both the Courts (Emergency Powers) Acts and the Increase of Rent, &c. Acts, the provisions of both must be complied with (compare the proviso to sect. 6, *ante*, p. 40). Thus, the fact that a mortgagor is more than 21 days behind with his interest, and, therefore, the mortgagee is not precluded from selling by this section, does not do away with the necessity of obtaining leave to sell under sect. 1 (1) (b) of the Courts (Emergency Powers) Act, 1914.

In cases where the mortgage contains an attornment clause there may be a question as to whether the mortgagor can claim any protection in his capacity of tenant (the question will only arise if he attorns tenant at a sufficiently high rent (sect. 12 (7)). We incline to the view that he would be unable to do this.

Provided that—

(i) this provision shall not apply to a mortgage where the principal money secured thereby is repayable by means of periodical instalments extending over a term of not less than ten years from the creation of the mortgage, nor shall this provision affect any power of sale exerciseable by a mortgagee who was on the twenty-fifth day of March nineteen hundred and twenty a mortgagee in possession,

or in cases where the mortgagor consents to the exercise by the mortgagee of the powers conferred by the mortgage; and

(ii) if, in the case of a mortgage of a leasehold interest the mortgagee satisfies the county court that his security is seriously diminishing in value or is otherwise in jeopardy, and that for that reason it is reasonable that the mortgage should be called in and enforced, the court may by order authorise him to call in and enforce the same, and thereupon this section shall not apply to such mortgage; but any such order may be made subject to a condition that it shall not take effect if the mortgagor within such time as the court directs pays to the mortgagee such portion of the principal sum secured as appears to the court to correspond to the diminution of the security.

As to sales by mortgagees, cp. further, *post*, p. 47.

The practical effect of sect. 19 of this Act, and sect. 38 of the Interpretation Act, 1889, is, it would seem, to substitute for 25th March, 1920, the date 25th November, 1915, as to houses which were within the 1915 Act, and 4th March, 1919, as to those within the 1919 Act. For as to those houses these repealed Acts would usually have operated to prevent possession being taken, and even if possession has in fact been taken in defiance of their provisions, so that in fact the mortgagee was in possession on March 25th, 1920, yet it would appear questionable whether the proviso is applicable so as to authorise a valid exercise of the power of sale. Cp., however, *Provident Association of London and Gollogally's Contract*, (1917) 1 Ir. R. 240.

Even where the mortgage is payable by instalments as stated, or the mortgagee is in possession, sect. 1, sub-sect. (1) applies, and the rate of interest cannot be raised, though the mortgagee is not restrained from selling, foreclosing, &c. It will be remembered that the Courts (Emergency Powers) Act, 1914, may apply, so as to render the Court's leave necessary to sell, &c., though this Act does not. But the former Act does not apply to sales by mortgagees in possession, and a mortgagee who has appointed a receiver who is still acting is for this purpose deemed to be in possession (Courts (Emergency Powers) (No. 2) Act, 1916, s. 1 (1)). Cp. *Re R. W. Hill, Ltd. and Simmons' Contract*, 150 L. T. 341. Under the proviso above, of course, the mere fact that a receiver was appointed before March 25th, 1920, will not take the case out of this Act.

From the mention in this saving clause of the power of sale

only, it was argued in *Walters* v. *White*, 33 T. L. R. 154, that in the case of a mortgage to which the Act applies the remedy of a mortgagee in possession is now limited to selling. Sargant, J., however, held that the saving clause was only inserted *ex abundanti cautela*, and had not this effect. A mortgagee in possession can foreclose, just as a mortgagee not in possession may foreclose, if the mortgagor has not fulfilled the conditions necessary to give him the protection of this section. And the same remark applies to the mortgagee's other remedies.

The second clause of the proviso obviates a hardship that might otherwise arise where money has been lent on leaseholds, and by lapse of time the term is likely to become too short to be a sufficient security for the amount advanced.

8. *Restriction on premiums.*—(1) A person shall not, as a condition of the grant, renewal, or continuance of a tenancy or sub-tenancy of any dwelling-house to which this Act applies, require the payment of any fine, premium, or other like sum, or the giving of any pecuniary consideration, in addition to the rent, and, where any such payment or consideration has been made or given in respect of any such dwelling-house under an agreement made after the twenty-fifth day of March nineteen hundred and twenty, the amount or value thereof shall be recoverable by the person by whom it was made or given:

Provided that, where any agreement has been made since the said date but before the passing of this Act for the tenancy of a house to which this Act applies, but the enactments repealed by this Act did not apply, and the agreement includes provision for the payment of any fine, premium, or other like sum, or the giving of any pecuniary consideration in addition to the rent, that agreement shall, without prejudice to the operation of this section, be voidable at the option of either party thereto.

(2) A person requiring any payment or the giving of any consideration in contravention of this section shall be liable on summary conviction to a fine not exceeding one hundred pounds, and the court by which he is convicted may order the amount paid or the value of the consideration to be repaid to the person by whom the same was made or given, but such order shall be in lieu of any other method of recovery prescribed by this Act.

(3) This section shall not apply to the grant, renewal or continuance for a term of fourteen years or upwards of any tenancy.

This section is aimed at the institution of "key money." Where accommodation is scarce the landlord, out of a number of prospective tenants all willing to pay a like rent, selects the one who will agree to pay the largest bonus on taking possession. In cases where the Act applies such an agreement is not enforceable, and any such payment made or consideration given can be recovered either by suing the landlord, by deduction from rent (sect. 14), or in the manner specified in sub-sect. (2) of this section. The section follows very closely the wording of sect. 1, sub-sect. (2) of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, but is wider in that it includes sub-tenancies, and applies not only to the payment of fines, &c., but the giving of any consideration. This considerably extends the scope of the provision. It will apparently cover the not unknown case where the grant of a tenancy is made conditional on the purchase by the tenant of fixtures at an exorbitant figure. As to the meaning of "fine, premium, or other like sum," cp. *Sharp Brothers and Knight* v. *Chant*, *post*, p. 60.

Sub-sect. (2) is new and imposes a penalty not hitherto existing. The language is consistent with the mere demand of a premium amounting to an offence, though on the other hand the provision being penal is to be strictly construed, and it is arguable that the concluding words contemplate that the demand shall have been complied with by the tenant or sub-tenant. Cf. the language of sect. 15, sub-sect. (2). The sub-section does not apply to "key money" except where required by the landlord or sub-lessor. As to premiums exacted by a lessee, see sect. 15 (2), *post*, p. 63.

The third sub-section meets such a case as that which arose in *Rees* v. *Marquis of Bute*, (1916) 2 Ch. 64, where a scheme, genuinely designed and adapted for the improvement of the position of the Marquis' tenants, under which they were to receive long leases at a reduced rent in consideration of a money payment, fell through owing to the impossibility under the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, of compelling payment of the premium.

9. *Limitation on rent of houses let furnished.*—(1) Where any person lets, or has, before the passing of this Act, let any dwelling-house to which this Act applies, or any part thereof, at a rent which includes payment in respect of the use of furniture, and it is proved to the satisfaction of the county court on the application of the lessee that the rent charged is yielding or will yield to the lessor a profit more

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than twenty-five per cent. in excess of the normal profit as hereinafter defined, the court may order that the rent, so far as it exceeds such sum as would yield such normal profit and twenty-five per cent. shall be irrecoverable, and that the amount of any payment of rent in excess of such sum which may have been made in respect of any period after the passing of this Act, shall be repaid to the lessee.

(2) For the purpose of this section, "normal profit" means the profit which might reasonably have been expected from a similar letting in the year ending on the third day of August nineteen hundred and fourteen.

This section (which is practically a repetition of sect. 9 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1919) only applies to dwelling-houses which, apart from the fact of their being let furnished, would fall within the Act, having regard to their rent and rateable value—at least this seems to be the effect, though the words "dwelling-house to which this Act applies" are not very apt for the purpose, since the Act does not, apart from this section, apply to houses let furnished. It may be indeed that on a strict interpretation this section has no application unless the house was on 3rd August, 1914, or has since been let unfurnished, and does not apply where there has never been a letting on 3rd August, 1914, or thereafter, except as a furnished house. It has no application to business premises (sect. 13 (1)).

The section, it will be noticed, does not bring furnished houses within the general provisions of the Act, but only within the much narrower provisions of this section. No additional security of tenure (except so far as sect. 10, *infra*, may so operate) is given the tenant of a furnished dwelling-house, *e.g.*, if he holds as weekly tenant the landlord can determine the tenancy by notice and the tenant must go—there is nothing to prevent the landlord suing for possession; the section only enables the County Court to invalidate a claim for rent beyond the specified limits during such period as the letting endures.

"After the passing of this Act," *i.e.*, 2nd July, 1920. The section applies whenever the tenancy commenced, but only enables excess rent to be recovered by the tenant where it was paid in respect of a period after that date.

The definition of normal profit may give rise to difficult cases. In the case of a furnished house at the seaside, *e.g.*, the rent and profit obtainable vary considerably according to the time of year. The words "similar letting" apparently involve a July let of 1920 being compared with a July let of 1914.

Cp. note to sect. 12, sub-sect. (2), proviso 1, *post*.

The section does not apply to business premises (sect. 13).

10. *Penalty for excessive charges for furnished lettings.*—Where any person after the passing of this Act lets any dwelling-house to which this Act applies or any part thereof at a rent which includes payment in respect of the use of furniture, and the rent charged yields to the lessor a profit which, having regard to all the circumstances of the case, and in particular to the margin of profit allowed under the last preceding section of this Act, is extortionate, then, without prejudice to any other remedy under this Act, the lessor shall be liable on summary conviction to a fine not exceeding one hundred pounds, and the court by which he is convicted may order that the rent so far as it exceeds the amount permitted by the last preceding section of this Act shall be irrecoverable and that the amount of any such excess shall be repaid to the lessee, but any such order shall be in lieu of any other method of recovery prescribed by this Act.

This is new legislation. It has no application to business premises (sect. 13).

11. *Statement to be supplied as to standard rent.*—A landlord of any dwelling-house to which this Act applies shall, on being so requested in writing by the tenant of the dwelling-house, supply him with a statement in writing as to what is the standard rent of the dwelling-house, and if, without reasonable excuse, he fails within fourteen days to do so, or supplies a statement which is false in any material particular, he shall be liable on summary conviction to a fine not exceeding ten pounds.

In this connection it is important to bear in mind the definition of standard rent (sect. 12 (1) (a), *post*, p. 47) and to observe that such rent is not necessarily that actually payable by the tenant, which may be a higher figure and include the permitted increases under this Act. In such cases the convenient thing would be for the landlord to state the standard rent and add particulars as to the increase made.

It is, perhaps, a defect that only tenants get the benefit of this provision. A purchaser also is vitally concerned to know the standard rent—he will himself otherwise be unable to comply with this section (though, no doubt, he will have "reasonable excuse") or to know the rent he may himself properly exact. This section, however, gives him no right to the information, and

questions may arise as to whether he is entitled to it independently. As to this, it is, perhaps, impossible to lay down a general rule, as the answer will probably depend on the terms of the contract and the circumstances generally. In the case of a purchase from a mortgagee, *e.g.*, selling under his statutory power of sale, it will presumably be incumbent on vendor to show either that the premises are not let, or that rent and rateable value take the property outside the Acts, or that, *e.g.*, by reason of the mortgagee having been in possession at the material date, the power of sale is not affected, and a statement showing the Acts to be inapplicable should form part of the abstract in such cases. The purchaser will be entitled to evidence of this, though if that evidence (*e.g.*, a statutory declaration) be not already in vendor's possession, purchaser can only require it at his own expense (*Re Wright and Thompson*, (1920) 1 Ch. 191).

Application and Interpretation of Act.

12. *Application and interpretation.*—(1) For the purposes of this Act, except where the context otherwise requires:—

(a) The expression "standard rent" means the rent at which the dwelling-house was let on the third day of August nineteen hundred and fourteen, or, where the dwelling-house was not let on that date, the rent at which it was last let before that date, or, in the case of a dwelling-house which was first let after the said third day of August, the rent at which it was first let:

Provided that, in the case of any dwelling-house let at a progressive rent payable under a tenancy agreement or lease, the maximum rent payable under such tenancy agreement or lease shall be the standard rent; and, where at the date by reference to which the standard rent is calculated, the rent was less than the rateable value the rateable value at that date shall be the standard rent;

Cases of a progressive rent, *i.e.* a rent which, beginning at a smaller figure, gradually rises from year to year are excluded. Such rents are said to be frequent under various philanthropic building schemes for veteran soldiers and others. This provision enables the rent to "progress" according to the agreement unhampered by the restrictions of these Acts.

But where there was an agreement for a tenancy at a rent which was to be at a higher figure during the last year of the tenancy, to speak of this rent as a progressive rent, said the Court, would be to use that expression in a sense in which it was not ordinarily used. A progressive rent under a tenancy agreement or lease was a rent which was periodically increased. The rent in question was a rent which was definitely increased once only for a particular period of twelve months, and therefore it was not a progressive rent within the section (*Goldsmith* v. *Orr*, (1920) W. N. 250).

Where lessor agrees to pay the rates the amount of the rate cannot be deducted for the purpose of computing the standard rent (*Westminster and General Properties Investment Co.* v. *Simmons*, (1919) W. N. 241; *Isaacs* v. *Titlebaum*, (1920) W. N. 29; *Laurie* v. *Woods*, (1920) 2 I. R. 106. Cp. *Mackworth* v. *Hellard*, (1920) W. N. 377, *post*, p. 56).

Thus, if a dwelling-house was on August 3rd, 1914, let to A. at 24*l*. per annum, the landlord agreeing to pay the rates, and has since been let to B. at 26*l*. and then to C. at 28*l*., the standard rent is 24*l*.

It has been held by the King's Bench Division in Ireland that where a tenant of a house in which he was living at a rent of 19*l*. bought the house in 1908, and resided in it till 1918, when he let it at 34*l*. a year, the standard rent was 19*l*. (*O'Neill* v. *Duncan*, 28th June, 1920).

Houses erected after or in course of erection at 2nd April, 1919, are not within the Act, and have no standard rent (subsect. (9), *post*, p. 57).

(b) The expression "standard rate of interest" means, in the case of a mortgage in force on the third day of August nineteen hundred and fourteen, the rate of interest payable at that date, or, in the case of a mortgage created since that date, the original rate of interest;

"Standard rent" attaches to the particular property: "standard rate of interest" does not. It is thought that where there is a covenant to pay at a rate reducible on punctual payment the lower rate is the standard rate.

While the standard rent is the same for every tenancy of the same property the standard interest may vary with each successive mortgage thereon. If on August 3rd, 1914, there was a mortgage on a small dwelling-house carrying interest at 4 per cent. and that mortgage has been paid off and a fresh mortgage given which carries interest at 5 per cent., the standard rate is 5 per cent. and not 4 per cent. But the Act will, of course, apply to the new mortgage unless created after the passing of this Act

(sub-sect. (4) (c) of this section, *infra*), and protect the mortgagor on the basis of the new standard rate of interest.

The application of this provision in the case of a transfer of a mortgage is not very clear. Suppose that A. is the owner of property coming within this Act, which at the outbreak of the war was in mortgage to B. at 5 per cent. B. called in his mortgage and A. arranged with C. to pay B. off and take a transfor of the mortgage, the rate of interest, however, to be in future $6\frac{1}{2}$ per cent. A. joins in the transfer and gives a fresh covenant to pay $6\frac{1}{2}$ per cent. interest, and a new proviso for redemption is inserted. If all this happens after the critical date, March 25th, 1920 (or as to 1915 Act Houses August 3rd, 1914, or 1919 Act Houses December 25th, 1918), must A. now pay $6\frac{1}{2}$ per cent.? Is the existing mortgage a mortgage which was in force on that date, or a mortgage created since that date? The latter, we think, the transfer being only a conveyancing device to effect what is really a new mortgage.

(c) The expression "net rent" means, where the landlord at the time by reference to which the standard rent is calculated paid the rates chargeable on, or which but for the provisions of any Act would be chargeable on the occupier, the standard rent less the amount of such rates, and in any other case the standard rent;

Cp. sect. 2, sub-sect. (1) (c) and (d). "Less the amount of such rates," *i.e.*, less the amount actually paid by the landlord after deducting the commission allowed on compounding. (See judgment of Scrutton, L.J., in *Nicholson* v. *Jackson*, 36 T. L. R. 854.) The rates to be deducted are, of course, the 1914 rates.

(d) The expression "rates" includes water rents and charges, and any increase in rates payable by a landlord shall be deemed to be payable by him until the rate is next demanded;

(e) The expression "rateable value" means the rateable value on the third day of August nineteen hundred and fourteen, or, in the case of a dwelling-house or a part of dwelling-house first assessed after that date, the rateable value at which it was first assessed;

As to Ireland, see sect. 18, *post*, and *Allen* v. *Inspector-General R.I.C.*, (1920) 12 L. T. 119. As to England we stated in the last edition that rateable value probably means the net rateable value and not the gross value. This view has now been confirmed by *Waller & Son, Ltd.* v. *Thomas*, (1921) W. N. 19.

(f) The expressions "landlord," "tenant," "mortgagee," and "mortgagor" include any person from time to time deriving title under the original landlord, tenant, mortgagee, or mortgagor;

Cp. also the clause immediately succeeding.

The expression "landlord" will thus cover a purchaser. On a sale with vacant possession, if the tenant takes advantage of the Act, it would appear that purchaser may rescind. (See, further, as to purchasers, *ante*, pp. 37, 46.)

The lessee of a mortgagor claims under him and gets the benefit of the Act as against the mortgagee, though the lease be void as against the mortgagee (*Martin* v. *Watson*, (1919) 2 Ir. R. 332). "Tenant" includes the executor (*Collis* v. *Flower*, *post*, p. 62). As to the meaning of "tenant," cp. judgments in *Remon* v. *City of London Real Property Co.*, 36 T. L. R. 869; *Taylor* v. *Faires*, 37 T. L. R. 56, and note, *ante*, p. 36.

(g) The expression "landlord" also includes in relation to any dwelling-house any person, other than the tenant, who is or would but for this Act be entitled to possession of the dwelling-house, and the expressions "tenant and tenancy" include sub-tenant and sub-tenancy, and the expression "let" includes sub-let; and the expression "tenant" includes the widow of a tenant dying intestate who was residing with him at the time of his death, or, where a tenant dying intestate leaves no widow or is a woman, such member of the tenant's family so residing as aforesaid as may be decided in default of agreement by the county court;

Thus, where a lease is invalid owing to some default of title in the lessor, the tenant is, it would seem, protected against the true owner as much as if he had taken his lease from him (cp. *Martin* v. *Watson*, *supra*).

This clause, which is new, may possibly affect assignments. If the lease is assigned before its expiration the assignee, as claiming under the tenant (clause (f), *supra*) is apparently protected by the Act. If the tenant assigns after the term has expired he has, *primâ facie*, nothing to assign except his statutory tenancy, and it is not clear how far that is assignable (cp. sect. 15 (1), *post*). The present provision might in such a case help the assignee, though the language of sect. 15 (1), *post*, p. 61, "so long as he retains possession," is against him; but cp. *Collis* v. *Flower*, *post*, p. 62. As to the case where there is a covenant against assigning,

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cp. *Cottell* v. *Baker*, *Dick* v. *Jacques*, *ante*, p. 39, where also see as to the position of sublessees.

(h) The expression "mortgage" includes a land charge under the Land Transfer Acts, 1875 (38 & 39 Vict. c. 87) and 1897 (60 & 61 Vict. c. 65);

(i) The expressions "statutory undertaking" and "statutory duties or powers" include any undertaking, duties or powers, established, imposed or exercised under any order having the force of an Act of Parliament.

(2) This Act shall apply to a house or a part of a house let as a separate dwelling, where either the annual amount of the standard rent or the rateable value does not exceed—

(a) in the metropolitan police district, including therein the City of London, one hundred and five pounds;

(b) in Scotland, ninety pounds; and

(c) elsewhere, seventy-eight pounds;

and every such house or part of a house shall be deemed to be a dwelling-house to which this Act applies:

Provided that—

(i) this Act shall not, save as otherwise expressly provided, apply to a dwelling-house bona fide let at a rent which includes payments in respect of board, attendance, or use of furniture; and

(ii) the application of this Act to any house or part of a house shall not be excluded by reason only that part of the premises is used as a shop or office or for business, trade, or professional purposes; and

(iii) for the purposes of this Act, any land or premises let together with a house shall, if the rateable value of the land or premises let separately would be less than one quarter of the rateable value of the house, be treated as part of the house, but subject to this provision, this Act shall not apply to a house let together with land other than the site of the house.

For information as to the Metropolitan Police District, see Metropolitan Police Guide, 1916, p. 39.

For the purpose of the Act a house may, and in practice often will, consist of a flat or even of a single room (cp. sub-sect. (8).

On the other hand, where a room is let to a lodger, the Act has no application. As to furnished dwelling-houses, see *ante*, p. 9.

Where two or more sets of chambers are included in the same tenancy, the combined rent and rateable value must be taken—the Act will not apply simply because the rateable value or apportioned rent of the chambers taken separately is within the specified figures (*Rider* v. *Rollitt*, (1920) W. N. 227).

The section provides two independent *criteria*. It will apply (1) if the standard rent does not exceed an amount which varies with the locality, or (2) if the rateable value does not exceed that amount. In other words, to be outside the section both rent and rateable value must be above the stated amount. The amount is treble the corresponding amount under the original Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915. For definition of rateable value, see sub-sect. (1) (e).

Apparently the Act only applies where the house is "let" (or sub-let, sect. 12 (1) (g)). So that it would seem if a mortgagor of a small dwelling-house is himself occupying the house, at any rate if it has never been let in such circumstances as to bring it within the Act (see sect. 12 (6)), there is nothing to prevent the mortgagee from enforcing his security. This is clearly so if "let as a separate dwelling" qualifies "house" as well as "part of a house"—which the language of the judgments suggests (cp. *Epsom Grand Stand Association, Ltd.* v. *Clarke*, (1919) W. N. 170; *Callaghan* v. *Bristowe*, 36 T. L. R. 841)—and even apart from this, the Act seems calculated to affect only premises which are let (cp. *National Steam Car Co.* v. *Barham*, *ante*, p. 36).

As to houses for the first time affected by the present Act, even if the tenancy expired before the coming into operation of the Act, the tenant, it was suggested in the last edition, and is now decided, is protected (*Remon* v. *City of London Real Property Co.*, 36 T. L. R. 869, and see *Dobson* v. *Richards*, (1919) W. N. 166).

Save as otherwise expressly provided," clause (i) of the proviso, *e.g.*, as to furniture, sects. 9 and 10. There is no express provision as to lettings including board and attendance, but perhaps as a result these matters can be taken into account for the purpose of estimating the profit under those sections. Conceivably also, an agreement to pay for attendance exacted as condition of a re-let might be "consideration" within sect. 8. Under this clause, if a flat is let at a given figure with a clause by which tenant is to pay a weekly sum for services, this sum is no part of the rent either for calculation of the amount of the rent or for the purpose of this proviso. *Aliter* if there is an inclusive rent (*Wood* v. *Wallace*, 65 S. J. 135).

Clause (ii) of the proviso will, *e.g.*, make the Act applicable, *e.g.*, to a garage let with living rooms above (*Callaghan* v. *Bristowe*, (1920) W. N. 308. It is statutory confirmation of *Epsom Grand Stand Association, Limited* v. *Clarke*, 35 T. L. R. 525,

where licensed premises were held to be within the previous Acts. In case of a combined let of a house with shop and fixtures, the Act provides no machinery by which the landlord can be given possession of the last and the rent be apportioned (*Ellen* v. *Goldstein*, (1920) W. N. 253). Under the present Act business premises are, by sect. 13, expressly included even where the tenancy comprises no dwelling accommodation. Sect. 13 only applies to cases not already caught by this section. (See 39 "Law Notes," 258, and *Read* v. *Goater*, (1921) W. N. 19.)

Clause (iii) of the proviso is new, and such cases as *Scott* v. *Austin*, (1919) W. N. 85, have consequently now no application.

"Land other than the site of the house" refers only to premises not protected by the Act. Hence if the letting includes both a dwelling-house and business premises falling within sect. 13, the Act will apply even though the rateable value of the business premises would not be less than a quarter of that of the house. (*Read* v. *Goater*, (1921) W. N. 19.)

(3) Where, for the purpose of determining the standard rent or rateable value of any dwelling-house to which this Act applies, it is necessary to apportion the rent at the date in relation to which the standard rent is to be fixed, or the rateable value of the property in which that dwelling-house is comprised, the county court may, on application by either party, make such apportionment as seems just, and the decision of the court as to the amount to be apportioned to the dwelling-house shall be final and conclusive.

This is necessary in order that where the tenancy is, *e.g.* of a single room it may be possible to ascertain the standard rent or rateable value of that room, or under sub-sect. (2) (iii), *supra*, p. 51.

The words "final and conclusive" take away any right of appeal (*Lyon* v. *Morris*, 19 Q. B. D. 139).

(4) Subject to the provisions of this Act, this Act shall apply to every mortgage where the mortgaged property consists of or comprises one or more dwelling-houses to which this Act applies, or any interest therein, except that it shall not apply—

(a) to any mortgage comprising one or more dwelling-houses to which this Act applies and other land if the rateable value of such dwelling-houses is less than one-tenth of the rateable value of the whole of the land comprised in the mortgage; or

(b) to an equitable charge by deposit of title deeds or otherwise; or

(c) to any mortgage which is created after the passing of this Act.

This (which repeats with the addition of (c) sect. 2, sub-sect. (4), of the Increase of Rent (War Restrictions) Act, 1915) must be read in conjunction with sub-sect. (2), *supra*. A mortgage of a farm, for instance, is not necessarily brought within the Acts by the fact that the rateable value of the house and buildings is not less than one-tenth of the rateable value of the whole land comprised in the mortgage; for the letting includes the land, and the rateable value of the land will probably not be less than a quarter of the rateable value of the farm house (*ante*, p. 51).

Subject to clause (a), the Act applies to a mortgage of two houses one of which is within the Act and the other not (*Re Dann's Application*, 149 L. T. 215). But see sub-sect. (5), *infra*.

As regards equitable charges, it has been held by Sargant, J., in *Jones* v. *Woodward*, (1917) W. N. 61, that the words "or otherwise" are not *ejusdem generis*, but are equivalent to "by some other process than the deposit of deeds"; so that an equitable charge which is created by writing, without any deposit of title deeds, is within the exception and outside the Acts. The meaning of "equitable charge" was very fully discussed by the Court of Appeal in *London County and Westminster Bank, Ltd.* v. *Tompkins*, (1918) 1 K. B. 515. The document in that case was in the usual stringent form employed by bankers. Tompkins in 1912, as security for a present or future overdraft, deposited with the plaintiff bank the title deeds of certain small dwelling-houses, and executed a deed in which he undertook to pay on demand the moneys that should for the time being be due from him to the bank, and he thereby charged his interest in the property comprised in the deeds with payment of the said moneys on demand; he declared that the bank should be deemed mortgagees under the deed of all the premises thereby charged; he undertook on request to execute a legal or other mortgage of the premises; he gave the bank a power of sale on default in payment; he declared that during the continuance of the security he would hold the property charged in trust for the bank, with power to the bank to remove him from being trustee and to appoint themselves or any persons to be trustees and to make a declaration vesting all his said estate and interest in such new trustees; and he irrevocably appointed certain officials of the bank to be his attorneys for executing certain documents, including a conveyance of his estate and interest in the premises. In 1917 the plaintiffs sued to recover the amount due on the overdraft. The Court of Appeal held that the document was an "equitable charge," and therefore outside the Act of 1915, so that the action was maintainable. Pickford, L.J., was of opinion that the document was not a

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"mortgage" at all, which he understood to mean what Lindley, M.R., said it meant in *Santley* v. *Wilde*, (1899) 2 Ch. 474, viz., "A conveyance of land as a security for the payment of a debt or the discharge of some other obligation for which it is given." Bankes and Scrutton, L.JJ., on the other hand, thought it was a mortgage, which term they said includes an equitable mortgage. But all the judges were of opinion that, whether it was a "mortgage" or not, it certainly was an "equitable charge" within the exception, and therefore the Act did not apply to it.

A formal mortgage of an equity of redemption—in other words, a second, third, or subsequent mortgage—appears to be within the Act. It is not made to secure only a temporary loan. It does convey an interest in property, though only an equitable interest. This view finds support from the wording of sect. 7, which contemplates that the Act may in some cases apply to a mortgagor who is liable to pay interest under a prior incumbrance.

A covenant to surrender copyholds without any actual surrender, the mortgagor appointing the mortgagee his attorney to make the surrender, would appear to be an equitable charge and therefore outside the Act.

(5) When a mortgage comprises one or more dwelling-houses to which this Act applies and other land, and the rateable value of such dwelling-houses is more than one-tenth of the rateable value of the whole of the land comprised in the mortgage, the mortgagee may apportion the principal money secured by the mortgage between such dwelling-houses and such other land by giving one calendar month's notice in writing to the mortgagor, such notice to state the particulars of such apportionment, and at the expiration of the said calendar month's notice this Act shall not apply to the mortgage so far as it relates to such other land, and for all purposes, including the mortgagor's right of redemption, the said mortgage shall operate as if it were a separate mortgage for the respective portions of the said principal money secured by the said dwelling-houses and such other land, respectively, to which such portions were apportioned:

Provided that the mortgagor shall, before the expiration of the said calendar month's notice, be entitled to dispute the amounts so apportioned as aforesaid, and in default of agreement the matter shall be determined by a single arbitrator appointed by the President of the Surveyors' Institution.

This is a new provision. Its application will give rise to many difficulties and often, *e.g.*, in the case of a mortgage of a block of City offices, be extremely complicated.

(6) Where this Act has become applicable to any dwelling-house or any mortgage thereon, it shall continue to apply thereto whether or not the dwelling-house continues to be one to which this Act applies.

This is rather Irish, but means that "once within the Act always within the Act." Suppose a house is let and falls within the Act. The tenancy is determined and the house ceases to be "let" within sect. 12, sub-sect. (2). It is still a house within the Act and the mortgagor is still protected. There are other possible cases where the section will operate.

(7) Where the rent payable in respect of any tenancy of any dwelling-house is less than two-thirds of the rateable value thereof, this Act shall not apply to that rent or tenancy nor to any mortgage by the landlord from whom the tenancy is held of his interest in the dwelling-house, and this Act shall apply in respect of such dwelling-house as if no such tenancy existed or ever had existed.

This repeats sect. 2 (6) of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, as amended by sect. 7 of the Courts (Emergency Powers) Act, 1917. For purposes of this calculation, the actual rent must be taken free from deduction for rates and taxes, even if the landlord has agreed to pay them (*Mackworth* v. *Hellard*, (1920) W. N. 377). The words from "and this Act shall apply" to the end mean that, if at the expiration of a tenancy where the rent is less than two-thirds of the rateable value, the rent is raised up to or above the two-thirds, the Act will become applicable, and the new rent will be subject to the limitations imposed by it. The net and not the gross rateable value is to be taken (*Waller & Son, Ltd.* v. *Thomas*, (1921) W. N. 19).

One effect of this sub-section will be that usually the ground landlord will be able to increase his "ground rent" if the property has appreciated in value when the lease falls in. Nor is he protected by this Act as against his mortgagee.

(8) Any rooms in a dwelling-house subject to a separate letting wholly or partly as a dwelling shall, for the purposes of this Act, be treated as a part of a dwelling-house let as a separate dwelling.

This repeats (with the addition of the words "wholly or partly") sect. 5 (4) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1919, concerning which we formerly wrote:—

"The object of this clause is obscure. Its effect is, no doubt,

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that where a tenant takes one or two rooms in a house for the purpose of dwelling in them the tenancy of the rooms will be within the Act. But since the rooms were surely, apart from this clause, 'a part of a house' within sect. 2, sub-sect. (2) of the principal Act (sect. 12, sub-sect. (2) of the present Act), this clause appears to do no more than repeat the existing rule. Accepted on this basis by the Commons as 'harmless,' after being inserted by the Lords, the clause may yet have unforeseen effects on the construction of the Act."

These remarks appear still applicable.

(9) This Act shall not apply to a dwelling-house erected after or in course of erection on the second day of April nineteen hundred and nineteen, or to any dwelling-house which has been since that date or was at that date being bonâ fide reconstructed by way of conversion into two or more separate and self-contained flats or tenements; but, for the purpose of any enactment relating to rating, the gross estimated rental or gross value of any such house to which this Act would have applied if it had been erected or so reconstructed before the third day of August nineteen hundred and fourteen, and let at that date, shall not exceed—

(a) if the house forms part of a housing scheme to which section seven of the Housing, Town Planning, &c. Act, 1919 (9 & 10 Geo. 5, c. 35), applies, the rent (exclusive of rates) charged by the local authority in respect of that house; and

(b) in any other case the rent (exclusive of rates) which would have been charged by the local authority in respect of a similar house forming part of such a scheme as aforesaid.

Houses erected after or in course of erection at the date of the passing of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1919 (2nd April, 1919), enjoyed under sect. 8 of that Act an immunity now continued.

The provision as to conversion into flats meets the situation which arose in *Woodward* v. *Samuels*, (1920) W. N. 82; 149 L. T. 177), where under the former Acts it was held that if a house to which the Acts applied was converted into flats, the original standard rent had to be apportioned among the flats. The present section encourages the process of conversion into flats by making each of the flats into a separate dwelling-house outside the Act, and capable of being let or mortgaged free from restriction.

(10) Where possession has been taken of any dwelling-houses by a Government department during the war, under the Defence of the Realm regulations, for the purpose of housing workmen, this Act shall apply to such houses as if the workmen in occupation thereof at the passing of this Act were in occupation as tenants of the landlords of such houses.

13. *Application to business premises.*—(1) This Act shall apply to any premises used for business trade or professional purposes or for the public service as it applies to a dwelling-house, and as though references to "dwelling-house" "house" and "dwelling" included references to any such premises, but this Act in its application to such premises shall have effect subject to the following modifications:—

(a) The following paragraph shall be substituted for paragraph (c) of subsection (1) of section 2:

"(c) In addition to any such amounts as aforesaid, an amount not exceeding thirty-five per centum of the net rent":

(b) The following paragraph shall be substituted for paragraph (d) of subsection (1) of section five:

"(d) the premises are reasonably required by the landlord for business trade or professional purposes or for the public service, and (except as otherwise provided by this subsection) the court is satisfied that alternative accommodation, reasonably equivalent as regards rent and suitability in all respects, is available":

(c) The following paragraph shall be added after paragraph (g) of the same subsection:

"(h) The premises are bona fide required for the purpose of a scheme of reconstruction or improvement which appears to the Court to be desirable in the public interest":

(d) Paragraph (i) of the same subsection shall not apply:

(e) Sections nine and ten shall not apply.

(2) The application of this Act to such premises as aforesaid shall not extend to a letting or tenancy in any market or fair

where the rent or conditions of tenancy are controlled or regulated by or in pursuance of any statute or charter.

(3) This section shall continue in force until the twenty-fourth day of June nineteen hundred and twenty-one.

This clause "spatchcocked" into an Act which, as originally drafted, applied to dwelling-houses only (the repealed Acts did not affect business premises), enlarges enormously the effect of the Act, and can hardly fail to give rise to many most difficult problems. The language is very wide—"premises" might possibly include property of any description used for the purposes mentioned, though, having regard to the provisions of the Act in reference to repairs, it is not improbable that the courts may restrict it to cases where there exists at least some sort of building. In this context regard must also be had to sect. 12 (2), proviso iii. It is submitted the section will not affect any premises already within sect. 12 (see 39 "Law Notes," 258).

The words "business, trade, or professional purposes" are also wide. There may be a trade or business though those carrying it on seek no profit (*Re Law Reporting Council*, 58 L. J. Q. B. 95). In many cases tenants of offices and the like will hold different parts of their holding under separate agreements. In such cases it is conceived each set of rooms must be treated as separate "premises" for the purpose of the Act (*Rider* v. *Rollitt, ante*, p. 52, and sect. 12 (8)).

It must be remembered that the result of this section is to apply the Act to mortgages of those business premises which come within the Act, and the Act in this respect is likely to give rise to many questions.

This section being somewhat of an experiment, its operation is limited, with a view to further consideration and perhaps legislation, to one year.

General.

14. *Recovery of sums made irrecoverable, &c.*—(1) Where any sum has, whether before or after the passing of this Act, been paid on account of any rent or mortgage interest, being a sum which is by virtue of this Act, or any Act repealed by this Act, irrecoverable by the landlord or mortgagee, the sum so paid shall be recoverable from the landlord or mortgagee who received the payment or his legal personal representative by the tenant or mortgagor by whom it was paid, and any such sum, and any other sum which under this Act is recoverable by a tenant from a landlord or payable or repayable by a landlord to a tenant, may, without prejudice to any other method of recovery, be

deducted by the tenant or mortgagor from any rent or interest payable by him to the landlord or mortgagee.

This replaces sect. 5 of the Courts (Emergency Powers) Act, 1917, which overruled *Sharp Brothers and Knight* v. *Chant*, (1917) 1 K. B. 771, where it was held that overpayments of the sort in question, made under a mistake of law, were irrecoverable. Amounts so overpaid are not a fine, premium, or other like sum within sect. 8 (1) (*ibid.*).

Under the replaced provision the overpaid amount had to be recovered within six months. This time limit no longer exists. See further, p. 70.

Where there has been no change of landlord or mortgagee, the tenant or mortgagor may deduct the amount overpaid from his rent or interest. If there has been a change of landlord or mortgagee, an action will have to be brought against the former landlord or mortgagee or his executor or administrator if he refuses to refund the amount on demand. Owing to the omission of the words "or his legal personal representative" after the word "mortgagee" at the end of the section, it might be argued that the executor or administrator of a landlord or mortgagee is legally entitled to demand the standard rent or interest in full, and compel the tenant or mortgagor to bring an action to recover the overpayments. But the definitions of "landlord" and "mortgagee" (*ante*, p. 50) appear wide enough to include their personal representatives.

(2) If—

(a) any person in any rent book or similar document makes an entry showing or purporting to show any tenant as being in arrear in respect of any sum which by virtue of any such Act is irrecoverable; or

(b) Where any such entry has, before the passing of this Act, been made by or on behalf of any landlord, the landlord, on being requested by or on behalf of the tenant so to do, refuses or neglects to cause the entry to be deleted within seven days,

that person or landlord shall, on summary conviction, be liable to a fine not exceeding ten pounds, unless he proves that he acted innocently and without intent to deceive.

This is intended to put a stop to the unscrupulous practice of frightening tenants into paying more than the standard rent by entering up the irrecoverable increase in the rent-book as "arrears," falsely asserted to be payable when the Acts cease to

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operate. The average tenant does not know sect. 19 (2) of this Act.

In this context reference may be made to the Housing, Town Planning, &c. Act, 1919 (9 & 10 Geo. V. c. 35), which by sect. 29 provides that in the case of houses intended or used for occupation by the working classes, the name and address of the medical officer of health for the district and of the landlord or other person who is directly responsible for keeping the house in all respects reasonably fit for human habitation shall be inscribed in every rent book, or, where a rent book is not used, shall be delivered in writing to the tenant at the commencement of the tenancy and before any rent is demanded or collected, and if any person demands or collects any rent in contravention of the provisions of this section he shall, in respect of each offence, be liable, on summary conviction, to a fine not exceeding 40*s*. Failure to comply with these requirements seems to prevent the rent being recovered, and to prevent its being lawfully due within sect. 5 (1) of this Act.

Reference should also be made to the Statement of Rates Act, 1919 (9 & 10 Geo. V. c. 31), which does not extend to Scotland or Ireland. It provides by sect. 1 (1), from and after January 1st, 1920, every document containing a demand for rent or receipt for rent, which includes any sum for rates paid or payable under any statutory enactment by the owner instead of the occupier, shall state either the annual, half yearly, quarterly, monthly, or weekly amount of such rates paid or payable in accordance with the last demands received by the owner from the rating authorities at the time of making his demand or giving his receipt in respect of the hereditament in question: Provided that, where such a statement as is required by this section has been furnished in connection with a demand for rent or receipt for rent in respect of a particular period, it shall not be necessary to furnish the statement upon any subsequent demand for rent or receipt for rent in respect of that period.

By sub-sect. (2) this Act shall not apply to weekly lettings at inclusive rentals in any market established under or controlled by statute.

Sect. 2 defines "demand for rent" and "receipt for rent" to include a rent book, rent card, and any document used for the notification or collection of rent due or for the acknowledgment of the receipt of the same; and by sect. 3, if any person makes a demand for rent or gives a receipt for rent in contravention of this Act, he shall, in respect of each offence, be liable, on summary conviction, to a fine not exceeding 40*s*.

15. *Conditions of statutory tenancy.*—(1) A tenant who by virtue of the provisions of this Act retains possession of any dwelling-house to which this Act applies shall, so long as he retains possession, observe and be entitled to the benefit of all

the terms and conditions of the original contract of tenancy, so far as the same are consistent with the provisions of this Act, and shall be entitled to give up possession of the dwelling-house only on giving such notice as would have been required under the original contract of tenancy, or, if no notice would have been so required, on giving not less than three months' notice:

Provided that, notwithstanding anything in the contract of tenancy, a landlord who obtains an order or judgment for the recovery of possession of the dwelling-house or for the ejectment of a tenant retaining possession as aforesaid shall not be required to give any notice to quit to the tenant.

This is new and makes clear, or at least clearer than formerly, the position of a tenant holding over under the Act. Thus, a tenant from year to year who, after notice to quit, takes advantage of the Act, must give the same notice as if the original tenancy had continued uninterruptedly. The provisions of the longer sort of lease may sometimes be difficult of application to this statutory tenancy; the language might possibly, *e.g.*, enable the tenant to exercise an option of purchase in the lease even after expiration of the lease, though it is thought that this would not be so (*cp. Bradbury* v. *Grimble & Co., Ltd.*, (1920) W. N. 313).

The former Acts in terms at any rate only barred ejectment proceedings and not re-entry by the landlord without any order for possession—since *Stoke Poges Golf Club* v. *Hemmings*, 36 T. L. R. 77, a distinctly possible contingency. Clearly under the present Act a landlord cannot take possession by the strong hand. (And see *Remon* v. *City of London Real Property Co.*, 36 T. L. R. 869.) In *Collis* v. *Flower*, (1920) W. N. 377, a tenant's executor who permitted the residuary legatee to have possession was held entitled to the benefit of the statutory tenancy, though not himself in physical occupation. This section, however, was apparently not brought to the Court's attention.

(2) Any tenant retaining possession as aforesaid shall not as a condition of giving up possession ask or receive the payment of any sum, or the giving of any other consideration, by any person other than the landlord, and any person acting in contravention of this provision shall be liable on summary conviction to a fine not exceeding one hundred pounds, and the court by which he was convicted may order any such payment or the value of any such consideration to be paid to the person by whom the same was made or given, but any

such order shall be in lieu of any other method of recovery prescribed by this Act.

Cp. sect. 8 (2).

This leaves a tenant entitled to the protection of the Act free to bargain with the landlord as to the terms on which he shall forego that protection. But he will commit an offence if he demands key money from an incoming tenant. On the other hand, neither sect. 8 nor this section covers the case where the tenant takes a premium for assigning his tenancy before expiration, though this section may apply to a premium on an assignment of the statutory tenancy if that be possible (*ante*, p. 50, and see also on this section *Collis* v. *Flower*, (1920) W. N. 377, *ante*, p. 62).

(3) Where the interest of a tenant of a dwelling-house to which this Act applies is determined, either as the result of an order or judgment for possession or ejectment, or for any other reason, any sub-tenant to whom the premises or any part thereof have been lawfully sublet shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms as he would have held from the tenant if the tenancy had continued.

16. *Minor amendments of law.*—(1) Section three of the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41), shall, except so far as it relates to the metropolis, have effect as though for the limits of value specified in that section there were substituted limits twenty-five per cent. in excess of the limits so specified, and that section and section four of the same Act shall have effect accordingly.

Under the sect. 3 referred to, where the rateable value does not exceed 20*l.* in the Metropolis, 13*l.* Liverpool, 10*l.* Manchester or Birmingham, and 8*l.* elsewhere, the landlord may compound the rates, *i.e.*, agree to be rated and pay them himself instead of the tenant, less a commission. The sect. 4 referred to enables the rating authority in these cases to rate the owner compulsorily. Thus, houses at present within these regulations will remain so, notwithstanding that owing to the increase of rent permitted by this Act their rateable value increases beyond the old limits.

(2) It shall be deemed to be a condition of the tenancy of any dwelling-house to which this Act applies that the tenant shall afford to the landlord access thereto and all reasonable facilities for executing therein any repairs which the landlord is entitled to execute.

(3) Where the landlord of any dwelling-house to which this Act applies has served a notice to quit on a tenant, the acceptance of rent by the landlord for a period not exceeding three months from the expiration of the notice to quit shall not be deemed to prejudice any right to possession of such premises, and, if any order for possession is made, any payment of rent so accepted shall be treated as mesne profits.

Where the landlord gives notice the tenancy will be determined *(ante*, p. 31), though the tenant is entitled to stay on under a statutory tenancy. Now acceptance by the landlord of rent accruing due after the expiration of the notice was held in *Hartell* v. *Blackler*, (1920) 2 K. B. 161, to be a waiver of the notice. That case, however, has been dissented from by another Divisional Court in the cases of *Davies* v. *Bristow* and *Penrhos College, Ltd.* v. *Butler* (reported together, 36 T. L. R. 753), and can no longer be relied on. Acceptance of rent for the statutory tenancy would therefore, apart from this section, not have amounted to a waiver, for the payment to the landlord would be *in adversum*, and the acceptance of it in the circumstances not a voluntary act on his part (*Davies* v. *Bristow*, *supra*; cp. *Evans* v. *Enever*, (1920) 2 K. B. 315), and in face of the sub-section acceptance of rent within the three months' limit would clearly not operate as a waiver. But the sub-section seems to contemplate that acceptance beyond these limits is to prejudice the landlord, though it may be a question whether he is prejudiced by being treated as waiving the notice, or, *e.g.*, as regards showing reasonable requirement under sect. 5 (1) (d). This provision, which appears for the first time in this Act, was inserted because it was found that in the case of the smaller class of tenant, where after expiry of a notice to quit the landlord refused tender of rent for fear of prejudicing his rights, by the time the case came into Court a substantial sum would be owing for rent. As a rule the tenant had not saved up to meet the claim, which became doubly burdensome.

17. *Rules as to procedure.*—(1) The Lord Chancellor may make such rules and give such directions as he thinks fit for the purpose of giving effect to this Act, and may, by those rules or directions, provide for any proceedings for the purposes of this Act being conducted so far as desirable in private and for the remission of any fees.

(2) A county court shall have jurisdiction to deal with any claim or other proceedings arising out of this Act or any of the provisions thereof, notwithstanding that by reason of the amount of claim or otherwise the case would not but for this

provision be within the jurisdiction of a county court, and, if a person takes proceedings under this Act in the High Court which he could have taken in the county court, he shall not be entitled to recover any costs.

By sub-sect. (2) the County Court can entertain claims, *e.g.*, for repayment of rent or mortgage interest irrespective of amount, but apparently cannot entertain an ejectment action not otherwise within the limits of its jurisdiction. For the Act itself gives no power to order possession (*ante*, p. 32), and since the landlord must, to succeed, show that he has a claim independently of the Act though not barred thereby, it appears questionable whether the claim can be said to arise out of the Act. Note, however, the language of sect. 5 (5), and cp. *Connolly* v. *Whelan*, 54 I. R. T. 18. This view has, it is understood, been taken by Mr. Justice Roche in an unreported case of *Stephenson* v. *Edwards*. Similar observations apply to the language of the Administration of Justice Act, 1920 (*ante*, p. 19), which prevents the parties from insisting on proceedings under the Act being tried by jury.

There will, apparently, be an appeal from the County Court to a Divisional Court in all cases (except those under sect. 2, sub-sect. (6), and sect. 12, sub-sect. (3), *ante*, pp. 26, 53 (*The Delano*, (1895) P. 40). Where the County Court judge refused an order for possession and made no order as to costs, it was held costs followed the event (*Bensusan* v. *Bustard*, (1920) 3 K. B. 655). But the Court should consider the question of costs and make an order (*ibid.*).

18. *Application to Scotland and Ireland.*—(1) This Act shall apply to Scotland, subject to the following modifications:—

(a) "Mortgage" and "incumbrance" mean a heritable security including a security constituted by absolute disposition qualified by back bond or letter; "mortgagor" and "mortgagee" mean respectively the debtor and the creditor in a heritable security; "covenant" means obligation; "mortgaged property" means the heritable subject or subjects included in a heritable security; "rateable value" means yearly value according to the valuation roll; "rateable value on the third day of August nineteen hundred and fourteen" means yearly value according to the valuation roll for the year ending fifteenth day of May nineteen hundred and fifteen; "assessed" means entered in the valuation roll;

"land" means lands and heritages; "rates" means assessments as defined in the House Letting and Rating (Scotland) Act, 1911 (1 & 2 Geo. 5, c. 53); "Lord Chancellor" and "High Court" mean the Court of Session; "rules" means act of sederunt; "county court" means the sheriff court; "sanitary authority" means the local authority under the Public Health (Scotland) Act, 1897 (60 & 61 Vict. c. 38); "mesne profits" means profits; the Board of Agriculture for Scotland shall be substituted for the Minister of Agriculture and Fisheries; the twenty-eighth day of May shall be substituted for the twenty-fourth day of June; the reference to the county agricultural committee shall be construed as a reference to the body of persons constituted with respect to any area by the Board of Agriculture for Scotland under subsection (2) of section eleven of the Corn Production Act, 1917 (7 & 8 Geo. 5, c. 46); references to levying distress shall be construed as references to doing diligence; the reference to the President of the Surveyors' Institution shall be construed as a reference to the Chairman of the Scottish Committee of the Surveyors' Institution; a reference to section five of the Housing, Town Planning, &c. (Scotland) Act, 1919 (9 & 10 Geo. 5, c. 60), shall be substituted for a reference to section seven of the Housing, Town Planning, &c. Act, 1919; and a reference to section one of the House Letting and Rating (Scotland) Act, 1911, shall be substituted for a reference to section three of the Poor Rate Assessment and Collection Act, 1869 (32 & 33 Vict. c. 41):

(b) Nothing in paragraph (b) of subsection (1) of the section of this Act relating to permitted increases in rent shall permit any increase in rent in respect of any increase after the year ending Whitsunday nineteen hundred and twenty in the amount of the rates payable by the landlord other than rates for which he is responsible under the House Letting and Rating (Scotland) Act, 1911:

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(c) Paragraph (d) of subsection (1) of the section of this Act relating to application and interpretation shall not apply:

This is because the House Letting and Rating (Scotland) Act, 1920 (10 & 11 Geo. V. c. 8), has already dealt with the subject.

(d) Where any dwelling-house, to which the Acts repealed by this Act applied, is subject to a right of tenancy arising from a yearly contract or from tacit relocation, and ending at Whitsunday nineteen hundred and twenty-one, the year ending at the said term of Whitsunday shall be deemed to be a period during which, but for this Act, the landlord would be entitled to obtain possession of such dwelling-house.

(2) This Act shall apply to Ireland subject to the following modifications:—

(a) A reference to the Lord Chancellor of Ireland shall be substituted for the reference to the Lord Chancellor:

(b) A reference to section fifteen of the Summary Jurisdiction (Ireland) Act, 1851 (14 & 15 Vict. c. 92), shall be substituted for the reference to section one of the Small Tenements Recovery Act, 1838:

(c) The expression "mortgage" includes a charge by registered disposition under the Local Registration of Title (Ireland) Act, 1891 (54 & 55 Vict. c. 66), and any notice of the apportionment of the principal money secured by a mortgage, if and when the notice becomes operative under this Act, and the award of any arbitrator with reference to any such apportionment may be registered under the enactments relative to the registration of deeds or titles as the case requires:

(d) The expression "rateable value" means the annual rateable value under the Irish Valuation Acts: Provided that, where part of a house let as a separate dwelling is not separately valued under those Acts, the Commissioner of Valuation and Boundary Surveyor may, on the application of the landlord or tenant, make such apportionment of the rateable value of the whole

house as seems just, and his decision as to the amount to be apportioned to the part of the house shall be final and conclusive, and that amount shall be taken to be the rateable value of the part of the house for the purposes of this Act but not further or otherwise:

(e) The following paragraph shall be substituted for paragraph (ii) of sub-section (1) of section five of this Act:

(ii) Where the Court is satisfied that the dwelling-house is required by the landlord for the occupation of a person engaged on work necessary for the proper working of an agricultural holding: or

(f) The following subsection shall be substituted for subsection (9) of section twelve of this Act:

(9) This Act shall not apply to a dwelling-house erected after, or in course of erection on, the second day of April nineteen hundred and nineteen, or to any dwelling-house which has been since that date or was at that date being bonâ fide reconstructed by way of conversion into two or more separate and self-contained flats or tenements; but the rateable value of any such dwelling-house to which this Act would have applied if it had been erected or so reconstructed before the said date shall be ascertained as though the rent for the purposes of section eleven of the Valuation (Ireland) Act, 1852 (15 & 16 Vict. c. 63), were the rent for which a similar dwelling-house might have been reasonably expected to let on the third day of August nineteen hundred and fourteen, the probable average annual cost of repairs, insurance, and other expenses (if any) necessary to maintain the dwelling-house in its actual state, and all rates, taxes, and public charges, if any (except tithe rentcharge), being paid by the tenant:

(g) The medical officer of health of a dispensary district shall be substituted for the sanitary authority in section two of this Act and in the First Schedule thereto, and the issue of certificates and the payment of fees in con-

nection with applications by tenants under the said section shall be subject to regulations to be made by the Local Government Board for Ireland:

(h) This Act shall not apply to any dwelling-house provided by a local authority under the Labourers (Ireland) Acts, 1883 to 1919, or under any of those Acts.

19. *Short title, duration, and repeal.*—(1) This Act may be cited as the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

(2) Except as otherwise provided, this Act shall continue in force until the twenty-fourth day of June nineteen hundred and twenty-three:

Provided that the expiration of this Act or any part thereof shall not render recoverable by a landlord any rent, interest or other sum which during the continuance thereof was irrecoverable, or affect the right of a tenant to recover any sum which during the continuance thereof was under this Act recoverable by him.

The provisions as to business premises are only in force till the 24th June, 1921. See *ante*, p. 59.

(3) The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule:

Provided that, without prejudice to the operation of section thirty-eight of the Interpretation Act, 1889 (52 & 53 Vict. c. 63), nothing in this repeal shall render recoverable any sums which at the time of the passing of this Act were irrecoverable, or affect the validity of any order of a court, or any rules or directions made or given under any enactment repealed by this Act, all of which orders, rules, and directions if in force at the date of the passing of this Act shall have effect as if they were made or given under this Act, and any proceedings pending in any court at the date of the passing of this Act, under any enactment repealed by this Act, shall be deemed to have been commenced under this Act.

It was held in *Benabo* v. *Horseley*, (1920) W. N. 299, that the proviso to sub-sect. (3) applied to proceedings by way of appeal.

By sect. 38 of the Interpretation Act, 1889, a repeal is not *inter alia* to affect any right, privilege, obligation, or liability acquired, accrued, or incurred under the repealed enactment.

The effect of the proviso, as read with the other provisions of the Act, it is submitted, is that though the repealed Acts are replaced by the present Act, houses which were already protected by those Acts enjoyed their existing protection till this Act operated to protect them as to the future. Thus, if a house let in August, 1914, at 20*l.* per annum had its rent increased to 30*l.* in 1916, the increase for the future is invalidated by the Act as from March 25th, 1920, but even previously to that the increase was invalidated by the 1915 Act, and continues so to be notwithstanding the repeal of that Act. Hence rent overpaid, even in respect of a period before March 25th, 1920, will be recoverable, except that under the 1915 Act, as amended by later provisions, such overpayment was only recoverable within six months, and if on 2nd July, 1920, recovery was already barred in this way it will continue so to be. But in all other respects the six months' limit is now inapplicable, whether the house fell within the previous Acts or not. There has been a difference of opinion on the application of this time limit in the County Courts (see Law Journal, Dec. 11th, p. 457; Law Times, same date, p. 364), but it is submitted that the above view is the correct one and not affected by sect. 14. It has been suggested in connection with cases similar to those in the illustration above (cases, that is, where the premises fell within the old Acts and there was an increase of rent before March 25th, 1920), that the tenant, at any rate if he had agreed to the increase, will in future be liable to pay the increase—that in the above illustration the effect of the repeal of the old Acts leaves the tenant liable in future to pay rent at the rate of 30*l.* It is urged that though, till the passing of this Act on July 2nd, 1920, the increase to 30*l.* was invalidated by the old Acts, these have now ceased to operate, and the substituted sect. 1 of the present Act will not be applicable, for the increase is not since March 25th, 1920. It is argued, in fact, that the practical substitution of dates we have suggested in our note to sect. 1, *ante*, p. 20, cannot be justified.

Such a conclusion, involving as it probably would an exclusion of the majority of houses from the Act, seems unlikely. We think it can be resisted on one or more of the grounds following: (1) simply making the substitution and defending it as implied in the general provisions of the Act—this is a bold but perhaps not impossible interpretation; (2) by reliance on the Interpretation Act, 1889, as still securing the tenant in his right or privilege of not paying the increase (though on this footing it is perhaps difficult to continue that right or privilege after Lady Day, 1921, when the old Acts would have expired); (3) by an argument that the repeal of the old Acts, in virtue of the proviso to sect. 19 (3), does not make the increase recoverable in future since it was "irrecoverable" before the repeal (this involves a somewhat artificial reading of "irrecoverable" as applicable to rent not yet due at the date of the repeal); or (4) finally, and perhaps preferably, by a denial of the suggested dilemma. The tenant is for the future protected by sect. 1 of the present Act, for the rent has

in truth been increased since March 25th, 1920. We arrive at this result as follows. Nothing that took place before July 2nd, 1920 (date of the passing of the present Act), was effective to cause an increase beyond the limits permitted by the old Act. Putting the case least favourably to our present contention, even if the tenant agreed to the increase, this agreement was ineffective till July 2nd, 1920. Now the date of the increase is not the date of the agreement to make it, but the date when the increase takes effect (*Goldsmith* v. *Orr*, *ante*, p. 21). The increase, therefore, took place after March 25th, and sect. 1 of this Act is therefore applicable.

In view of the need for reference to the old Acts which still exists notwithstanding their repeal, it has been thought convenient to set them out in an Appendix.

SCHEDULES.

FIRST SCHEDULE. Sects. 3 & 18.

FORM OF NOTICE BY LANDLORD.

Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

Date .

To

Address of premises to which this notice refers - -

Take notice that I intend to increase the rent of *l.* *s.* *d.* per at present payable by you as tenant of the above-named premises by the amount of *l.* *s.* *d.* per .

The increase is made up as follows:—

(a) *l.* *s.* *d.* under paragraph (a) of subsection (1) of section two of the Act, being six [eight] per cent. on *l.* *s.* *d.* expended by me since [*insert date*] on improvements and structural alterations, and consisting of*

(b) *l.* *s.* *d.* under paragraph (b) of subsection (1) of section two of the Act, on account of an increase in the rates payable by me from *l.* *s.* *d.* per to *l.* *s.* *d.* per in respect of the premises.

(c) *l.* *s.* *d.* under paragraph (c) of subsection (1) of section two of the Act, being per cent. on the net rent of the premises. The net rent is *l.* *s.* *d.* The standard rent is *l.* *s.* *d.*

(d) *l.* *s.* *d.* under paragraph (d) of subsection (1) of section two of the Act, being per cent. on the net rent of the premises. The net rent is *l.* *s.* *d.* The standard rent is *l.* *s.* *d.*

* Here state improvements and alterations effected.

The increase under head (b) will date from , being one clear week from the date of this notice, and the remaining increases from , being four clear weeks from the date of this notice.

* The increase under head (d) is on account of my responsibility for repairs, for no part [part only] of which are you under an express liability.

† At any time or times, not being less than three months after the day of 19 , you are entitled to apply to the county court for an order suspending the increases under heads (c) and (d) above if you consider that the premises are not in all respects reasonably fit for human habitation or otherwise not in a reasonable state of repair. You will be required to satisfy the county court, by a report of the sanitary authority or otherwise, that your application is well founded, and for this purpose you are entitled to apply to the sanitary authority for a certificate. A fee of one shilling is chargeable on any application for a certificate, but, if the certificate is granted, you can deduct this sum from your rent. The address of the sanitary authority is .

Signed

Address

Sect. 19.

SECOND SCHEDULE.

Enactments Repealed.

The Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915 (5 & 6 Geo. 5, c. 97) (the whole Act).

The Courts (Emergency Powers) Act, 1917 (7 & 8 Geo. 5, c. 25) (sects. 4, 5 and 7).

The Increase of Rent and Mortgage Interest (Restrictions) Act, 1919 (8 & 9 Geo. 5, c. 7) (the whole Act).

The Increase of Rent, &c. (Amendment) Act, 1919 (9 & 10 Geo. 5, c. 90) (the whole Act).

As to this schedule, see *ante*, p. 69. The Increase of Rent, &c. (Amendment) Act, 1918, was already repealed by the last Act in the schedule.

* Where the tenant is under an express liability for part of the repairs, the increase under head (*d*) is to be settled in default of agreement by the county court.

† This paragraph need not be included if there is no increase under head (*d*).

APPENDIX I.

STATUTORY RULES AND ORDERS, 1920, No. $\frac{1261}{L.\ 37}$.

INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS), ENGLAND.

County Court Procedure.

THE INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) RULES, 1920, DATED JULY 9, 1920, MADE BY THE LORD CHANCELLOR UNDER THE INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1920 (10 & 11 GEO. 5, c. 17).

Preliminary.

The following Rules under the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (in these Rules referred to as the Act), shall apply to the County Courts and to the City of London Court, which shall for the purposes of these Rules be deemed to be a county court.

Rule 3 of these Rules, as to applications under the Courts (Emergency Powers) Act, 1914, shall apply also to the High Court; and the rules made under that Act shall have effect subject to that Rule.

These Rules may be cited as the Increase of Rent and Mortgage Interest (Restrictions) Rules, 1920, and shall come into operation on the 15th day of July, 1920.

On the coming into operation of these Rules the following Rules, viz.:—

The Increase of Rent and Mortgage Interest (War Restriction) Rules, 1916, dated the 29th January, 1916, and the like Rules, 1919, dated the 21st May, 1919, shall be annulled without prejudice to anything done thereunder, and these Rules shall apply to all proceedings pending under the Rules hereby annulled on the day when these Rules come into operation.

Applications under Section 2; Section 9; Section 12, subsection (1 g) or (3); Section 6; or Section 5, subsection (6).

1. An application to the county court under the Act—

(a) to determine any question or make any order or declaration relating to increase of rent under section 2, or section 9; or

(b) to apportion the rent or rateable value of the property under subsection 3 of section 12; or

(c) for leave to distrain under section 6; or

(d) by a member of the tenant's family under section 12, subsection (1 *g*); or

(e) for compensation under section 5, subsection (6);

may be made in the case of (e) to the court in which the order or judgment complained of was obtained, and in all other cases to the court in the district of which the premises are situate.

2. (1) An application to the county court under the Act for an order authorising a mortgagee to call in and enforce a mortgage of a leasehold interest to which the Act applies, pursuant to the second proviso to section 7, may be made—

(a) to the court in the district of which the mortgaged property is situate; or

(b) to the court in the district of which the mortgagor resides or carries on business; or

(c) if the mortgagee resides or carries on business in the district of any court mentioned in section 84 of the County Courts Act, 1888, and the mortgagor resides or carries on business in the district of any other court mentioned in the said section, either to the court in the district of which the mortgagee resides or carries on business, or to the court in the district of which the mortgagor resides or carries on business.

3. (1) Subject to the provisions of this Rule, the Courts (Emergency Powers) Rules and the County Courts (Emergency Powers) Rules as to applications to the High Court or to the county court for leave to foreclose or realize any security to which the Courts (Emergency Powers) Act, 1914, applies, shall cease to apply to mortgages of leasehold interests to which the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, applies: and this Rule shall apply in lieu thereof.

(2) An application under the last preceding Rule for an order authorising a mortgagee to call in and enforce a mortgage of a leasehold interest shall if and so far as an application for leave to foreclose or realize the security is required under the Courts (Emergency Powers) Act, 1914, be deemed to be also an application for leave to foreclose or realize the security under that Act, and no separate application under that Act shall be necessary.

(3) If during the progress of the proceedings on any such application it shall be made to appear to the court that the mortgage is one to which the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, does not apply, but that leave to realize or enforce the security is required under the Courts (Emergency Powers) Act, 1914, and that the amount of the principal sum secured by the mortgage does not exceed five hundred pounds, the application may proceed in the county court as an application for leave to foreclose or realize the security under the last mentioned Act and the County Courts (Emergency Powers) Rules, and those Rules shall apply accordingly; but if the amount of the principal sum secured by the mortgage exceeds five hundred pounds the application shall not proceed under the last mentioned Act, unless the respondent consents to the county court having jurisdiction in the matter, in which case the court shall have jurisdiction to deal with the application as an application for leave to foreclose or realize the security under the last mentioned Act and Rules, and those Rules shall apply accordingly.

(4) If it shall be made to appear to the court that the mortgage is one to which neither of the above mentioned Acts applies, the application shall be struck out.

4. An application under these Rules (other than the applications referred to in rules 19 and 20) shall be made by means of a summons according to such one of the forms in the Appendix as shall be applicable to the case, entitled "In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920."

Preparation, Filing, &c. of Summonses.

5. The summons shall be prepared by the applicant and filed with the registrar, with as many copies as there are parties to be served: Provided that any summons, with the necessary copies, may, if the registrar so thinks fit, be prepared in his office; and the registrar shall examine, complete, seal, and sign the summons and copies, and return the copies to the applicant for service.

Service and Substituted Service.

6.—(1) The summons shall be served on every person affected thereby four clear days at least before the day fixed for the hearing of the summons, unless the judge or registrar gives leave for shorter service. On an application by the Sanitary Authority under section 2, subsection (2) notice in writing of the summons shall be given to the tenant by the Sanitary Authority.

(2) Service shall be effected in accordance with the provisions of Order LIV., Rules 2 and 3, of the County Court Rules as to service of notice of an interlocutory application.

(3) The practice of the courts as to substituted service of summonses and notices shall apply to summonses under those Rules.

Applications to Registrar.

7. Any application under these Rules may be made to the registrar, subject to the following provisions:—

(a) The registrar may in any case, and shall on the application of either party, made on the hearing of the application, and before the registrar has given his decision, refer the matter to the judge:

(b) The judge may vary or rescind any determination or order made by the registrar, and may make such determination or order as may be just:

(c) An application for such variation or rescission shall be made on notice in writing in accordance with the County Court Rules as to interlocutory applications; and the notice shall be filed within four clear days from the date of the determination or order of the registrar, and if it is not so filed no such application shall be allowed to be made without leave of the judge.

Evidence in Support of Application.

8. No affidavit in support of the application shall be used, except by leave of the court, but the court shall hear oral evidence tendered by either party.

Power to hear Cases in Private.

9. The court may at any stage of the proceedings on an application under the Act order that the case shall thenceforward be heard in private.

Transfer of Proceedings.

10. If during the progress of the proceedings on any application it shall be made to appear to the judge that the same could be more conveniently heard in some other court, it shall be competent to the judge to transfer the same to such other court; and in any such case the provisions of section 85 of the County Courts Act, 1888, and section 10 of the County Courts Act, 1919, and of Order VIII., Rule 9, of the County Court Rules shall apply.

Decisions of Court.

11. On the hearing of the application, or at any adjournment thereof, the court, on proof of the service of the summons, if the respondent does not appear, shall—

(a) in the case of an application under section 2 or section 9 or section 5, subsection (6) determine the question raised or make or refuse the order or declaration asked for; or

(b) in the case of an application under subsection (3) of section 12 apportion the rent or rateable value; or

(c) in the case of an application under section 6 give or refuse leave; or

(d) in the case of an application under section 7 make or refuse an order authorising the mortgagee to call in or enforce the mortgage; or

(e) in the case of any application make such other determination, order or declaration in the matter as the court shall think fit.

Power to impose Conditions.

12. On an application for an order authorising a mortgagee to call in and enforce a mortgage, the court may, after considering all the circumstances of the case and the position of all the parties, make or refuse to make the order subject to such conditions as the court may think fit.

Certificates, Orders or Declarations on Applications.

13. When the court has given its decision on any application, a certificate of the determination of the court, or an order or declaration in accordance with the decision of the court, shall be prepared and sealed and signed by the registrar, and duplicates thereof shall be delivered to the bailiff, who shall within twenty-four hours send the same, by post or otherwise, to the parties; but it shall not be necessary for the party in whose favour a certificate or order or declaration is made to prove, previously to taking proceedings thereon, that it was posted or reached the opposite party.

General Provisions as to Procedure on Applications.

14. Subject to the provisions of the Act and these Rules, the practice and procedure of the court in an action, and in particular the practice and procedure with respect to the summoning of witnesses, and with respect to discovery and inspection of documents, shall, with the necessary modifications, apply to proceedings on an application under the Act.

15.—(1) The following fees shall be payable under Schedule B, Part I., of the Treasury Order regulating Fees in the County Courts, on applications under the Act and these Rules, in lieu of all other fees on such proceedings, viz.:—

	s.	d.
On an application for an order or declaration or the determination of a question relating to the increase of rent of premises or for leave to distrain—		
6*d.* in the £ or part of a £, calculated on 4 weeks' standard rent (or on an application under section 9 the actual rent) of the premises, or in the case of leave to distrain on the rent to be distrained for, but not exceeding	2	6

	s.	d.
On an application for the apportionment of rent or rateable value or for compensation under section 5, subsection 6	10	0
On an application for an order authorising a mortgagee to call in and enforce a mortgage	20	0

The foregoing fees shall include drawing, sealing, and issuing the certificate or order, and the fee prescribed by paragraph 12 of Part I. of Schedule B of the Fees Order shall not be taken.

(2) On summonses to witnesses, the fees prescribed by Schedule A of the Fees Order shall be taken.

(3) On applications for discovery or inspection of documents, and on applications for rescission or variation of orders or judgments under section 5, subsection 3, the fees prescribed by paragraphs 10 and 12 of Part I. of Schedule B of the Fees Order shall be taken.

(4) The court may remit or excuse in whole or in part any fee paid or payable under this Rule.

Costs.

16.—(1) The costs of any application under the Act and these Rules shall be in the absolute discretion of the court.

(2) The court may either fix the amount of such costs, or allow them on the scale applicable to an interlocutory application in an action for an amount equal to—

(a) in the case of an application for an order or declaration or determination of a question relating to the increase of rent, or for leave to distrain, the amount on which fees are payable under Rule 15; or

(b) in the case of an application to apportion rent or rateable value, one-half of the annual rent or rateable value apportioned to the premises; or

(c) in the case of an application for an order authorising a mortgagee to call in and enforce the mortgage, the amount of the principal sum secured: Provided that Column B of the Scale shall apply in all cases above twenty pounds, to the exclusion of Column C.

(3) Where the amount does not exceed ten pounds, there may be allowed for all work done by a solicitor in relation to the application—

	s.	d.
If the amount exceeds £2 but does not exceed £5	6	8
If the amount exceeds £5 but does not exceed £10	10	0

(4) In the case of an application for compensation under section 5, subsection 6, the court may either fix the amount of such costs or allow them on the scale applicable in an action.

(5) In the case of any other application the Court shall fix the amount of such costs.

(6) The court may direct that any costs allowed shall be payable by the opposite party, or, in the case of an application for an order authorising a mortgagee to call in and enforce a mortgage, that they shall be included in the security; and any order directing payment of costs shall be included in the certificate or order, and shall be enforceable in the same manner as an order for payment of costs made in an action.

Forms.

17.—(1) The forms in the Appendix hereto, with such modifications as may be necessary, shall be used for summonses, applications, certificates and orders under the Act and these Rules.

(2) The registrar of any Court may apply to the Treasury for any of the said forms to be printed and supplied to him, and if the application is granted may obtain such forms and supply the same without charge for the use of parties requiring the same.

Proceedings for the Recovery of Rent or Mortgage Interest, or for the Recovery of Possession of Tenements or Ejectment of Tenants.

18. Where proceedings are taken in the county court for the recovery of rent of any premises to which the Act applies, or of interest on a mortgage to which the Act applies, or for the recovery of possession of any premises to which the Act applies, or for the ejectment of a tenant from any such premises, the court shall, before making an order for the recovery of such rent or interest, or for recovery of possession or ejectment, satisfy itself that such order may properly be made, regard being had to the provisions of the Act.

Death of Tenant Intestate.

19. Where, on the death of a tenant intestate, a member of his family requires the decision of the Court under the latter part of section 12, subsection 1 (g) of the Act, the judge shall give such directions as to the procedure to be followed, and the notices to be given to and the attendance of all such persons as may be interested as he shall think fit, and he (or the registrar, if so directed by him) shall consider what may be urged (either orally or in writing) by or on behalf of such persons, and therefore give his decision: provided that the registrar's decision may be varied by the judge pursuant to Rule 7. Rule 13, relating to certificates of decisions, shall apply to a decision under this subsection if so directed by the judge.

Applications for Stay, Rescission or Variation of Orders or Judgments.

20. An application to the Court for stay, suspension, discharge, rescission or variation of orders or judgments under section 5, subsection (2) or (3) may be made on notice in writing in accordance with the County Court Rules as to interlocutory applications.

The 9th day of July, 1920.

Birkenhead, C.

We, the undersigned, two of the Commissioners of His Majesty's Treasury, do hereby, with the consent of the Lord Chancellor, order that the several fees specified in Rule 15 of the foregoing Rules shall be taken on the proceedings therein mentioned, in lieu of all other fees for the proceedings therein set forth.

James Parker,
J. Towyn Jones.

I concur in the above order as to fees.

Birkenhead, C.

The 9th day of July, 1920.

APPENDIX.

1.

Summons for Determination of Question or Declaration or Order relating to Increase of Rent under Section 2, subsections (1) or (3).

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

To
of .

TAKE NOTICE, that you are hereby summoned to attend this Court on , the day of , at the hour of in the

noon, on the hearing of an application on the part of , of , for the determination, pursuant to the above-mentioned Act, of a question [or for a declaration or order] relating to the increase of rent of certain premises [*or* of part, that is to say (*here specify the part*) , of certain premises], to which the said Act applies, situate at , and known as , of which the applicant is the tenant and you the respondent are the landlord [*or* of which you the respondent are the tenant and the applicant is the landlord], the question being [in respect of the transfer to the tenant of certain burdens and liabilities previously borne by the landlord [*or* in respect of the transfer to the landlord of certain burdens and liabilities previously borne by the tenant], [*or* (*here state the question to be determined or the declaration or order asked for*)] and for an order providing for the costs of the application.

And further Take Notice, that if you do not attend in person or by your solicitor at the time and place above mentioned such proceedings will be taken and determination or declaration or order made as the Court may think just.

Dated this day of , 19 .

By the Court,
Registrar.

To (*the respondent, naming him*).

2.

Summons for Order authorising Mortgagee to call in and enforce Mortgage.

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

To
of

Take Notice, that you are hereby summoned to attend this Court on , the day of , at the hour of in the noon, on the hearing of an application on the part of

of , for an order that notwithstanding the provisions of the above-mentioned Act, the said may be at liberty to call in and enforce a certain mortgage to which the said Act applies, dated the day of , granted by you the respondent to the applicant [*or* to and assigned by him to the applicant] on certain leasehold property situate at , and known as , on the ground that the security is seriously diminishing in value or is otherwise in jeopardy, and that for that reason it is reasonable that the mortgage should be called in and enforced, and for an order providing for the costs of the application.

And further Take Notice, that if you do not attend in person or by your solicitor at the time and place above mentioned such proceedings will be taken and determination made as the Court may think just.

Dated this day of , 19 .

By the Court,
Registrar.

To (*the respondent, naming him*).

3.

Certificate on Application for Determination of Question or Declaration or Order relating to Increase of Rent, under Section 2, *subsections* (1) *or* (3).

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

On the application of , and upon hearing ,

This Court doth pursuant to the above-mentioned Act determine and declare [or order] as follows—

[(a) that as the result of the transfer to the applicant, A.B., [*or* the respondent, C.D.,] the tenant of certain premises [*or* of part, that is to say *(here specify the part)* of certain premises] to which the said Act applies, situate at , and known as , of the following burdens and liabilities formerly borne by the

respondent, C.D., [*or* by the applicant, A.B.,] the landlord, that is to say (*here specify the burdens and liabilities transferred*) the terms on which the said premises are held are on the whole less favourable to the tenant than the previous terms, and that the rent of the said premises has thereby been increased for the purposes of the said Act by the sum of a week [*or* are on the whole not less favourable to the tenant than the previous terms, and that the rent of the said premises has not been increased for the purposes of the said Act]:

[*or* (b) that as the result of the transfer to the applicant, A.B., [*or* the respondent, C.D.,] the landlord of certain premises [*or* of part, that is to say (*here specify the part*) of certain premises] to which the said Act applies, situate at , and known as , of the following burdens and liabilities previously borne by the respondent, C.D., [*or* the applicant, A.B.,], the tenant, that is to say (*here specify the burdens and liabilities transferred*) , and the increase of rent in respect of such transfer, the terms on which the said premises are held are on the whole more favourable to the tenant than the previous terms, and that the increase of rent in respect of such transfer is to be deemed not to be an increase of rent for the purposes of the said Act [*or* are on the whole less favourable to the tenant than the previous terms, and that the increased rent in respect of such transfer is to be deemed to be an increase of rent for the purposes of the said Act to the extent of a week]]

[*or as the case may be*].

[*or* (*here state the decision of the Court on the question or matter the subject of the application*).]

[*Add, if so ordered,*

And it is ordered that the respondent, C.D., [or the applicant, A.B.,] do, on or before the day of , 19 , to pay to the applicant, A.B., [or to the respondent, C.D.,] his costs of this application, which are hereby allowed at the sum of £].

Dated this day of , 19 .

By the Court,

Registrar.

To (*the applicant and respondent, naming them*).

4.

Order on Application for Order authorising Mortgagee to call in and enforce Mortgage.

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D
(*address and description*) Respondent.

On the application of , and upon hearing ,

This Court being satisfied that the security of the applicant on certain leasehold property situate at , and known as , under a certain mortgage to which the above-mentioned Act applies, dated the day of , granted by the respondent to the applicant [*or* to , and assigned by him to the applicant], is seriously diminishing in value, or is otherwise in jeopardy, and that it is reasonable that the said mortgage should be called in and enforced, doth pursuant to the above-mentioned Act order that notwithstanding the provisions of the said Act the applicant, A.B., be at liberty and he is hereby authorised to call in and enforce the said mortgage.

[*If any conditions imposed, add* subject to the following conditions, that is to say:—

].

[*Or,* It is ordered that the application of the applicant, A.B., for an order authorising him to call in and enforce a certain mortgage to which the above-mentioned Act applies, on certain leasehold property situate at , and known as , dated the day of , 19 , granted by the respondent C.D., to the applicant, A. B. [*or* to , and assigned by him to the applicant, A.B.,] be and the same is hereby dismissed.

[*Add, if so ordered,*

And it is ordered that the applicant, A.B., be allowed as against the respondent, C.D., his costs of his application, which are hereby allowed at the sum of £ .

And it is ordered that the said sum of £ be added to the security created by the said mortgage [*or* that the respondent, C.D., do pay the said sum of £ to the applicant, A.B., on or before the day of , 19].

[*Or*, And it is ordered that the applicant, A.B., do, on or before the day of , 19 , pay to the respondent, C.D., his costs of this application, which are hereby allowed at the sum of £ .]

Dated this day of , 19 .

By the Court,
Registrar.

To (*the applicant and respondent, naming them*).

5.

Summons for Apportionment of Rent or Rateable Value of Property under Section 12, *subsection* (3).

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D
(*address and description*) Respondent.

To
of

Take Notice, that you are hereby summoned to attend this Court on , the day of , at the hour of in the noon, on the hearing of an application on the part of of , for the apportionment of the rent on the 3rd day of August, 1914 [*or* (*if the property was last let before or first let after the 3rd August*, 1914, *insert the date at which it was so let*; see *Act*, *section* 12, *subsection* 1 (a) [*or* the rateable value on the 3rd day of August, 1914 [*or* (*if the property was first assessed after that date, insert the date at which it was first assessed*)] of certain property situate at and known as and comprising certain premises [*or* part, that is to say (*here specify the part*) of certain premises] situate at and known as for the purpose of determining the standard rent [*or* the rateable value] of the said premises [*or* of the above-mentioned part of the said premises] for the purposes of the above-mentioned Act, and for an order providing for the costs of the application.

And further Take Notice, that if you do not attend in person or by your solicitor at the time and place above mentioned such proceedings will be taken and determination made as the Court may think just.

Dated this day of , 19 .

By the Court,

Registrar.

To (*the respondent, naming him*).

6.

Certificate on Application for Apportionment of Rent or Rateable Value.

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D
(*address and description*) Respondent.

On the application of and upon hearing

This Court, for the purpose of determining the standard rent [*or* rateable value] of certain premises [*or* of part, that is to say *(here specify the part)* of certain premises] to which the above-mentioned Act applies, situate at , and known as , and comprised in a certain property known as doth pursuant to the above-mentioned Act declare that the rent at which the said property was let on the 3rd day of August, 1914 [*or if the property was last let before that date or first let after that date*, on the day of , 19 *(the date on which it was so let)*], shall be apportioned between the said premises [*or* the said part of the said premises] and the rest of the said property as follows, viz.:—

£ to the said premises [*or* the said part of the said premises]: and

£ to the remainder of the said property.

[*or* doth pursuant to the above-mentioned Act declare that the rateable value of the said property on the 3rd day of August, 1914 [*or if the property was first assessed after that date* on the day of , 19 *(the date on which it was first assessed)*], shall

be apportioned between the said premises [*or* the said part of the premises] and the rest of the said property as follows, viz.:—

£ to the said premises [*or* the said part of the said premises]; and,

£ to the remainder of the said property.

[*Add, if so ordered,*

And it is ordered that the respondent, C.D., [*or* the applicant, A.B.,] do, on or before the day of , 19 , pay to the applicant, A.B., [*or* to the respondent, C.D.,] his costs of this application, which are hereby allowed at the sum of .]

Dated this day of , 19 .

By the Court,

Registrar.

To (*the applicant and respondent, naming them*).

7.

Summons for Order of Suspension and Declaration relating to Increase of Rent under Section 2, subsection (2).

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

To
of

Take Notice, that you are hereby summoned to attend this Court on the day of , at the hour of in the noon, on the hearing of an application under Section 2, subsection (2) of the said Act on the part of of for a declaration that certain premises [*or* of part, that is to say (*here specify the part*) of certain premises] to which the said Act applies, situate at , and known as , of which the applicant [or where the applicant is the Sanitary Authority state the name of the tenant] is the tenant, and you, the respondent, are the landlord, are not in all

respects reasonably fit for human habitation *or* are not in a reasonable state of repair] and that the condition of the premises is not due to the tenant's neglect, or default, or breach of express agreement, if any, and for an order suspending the increase of rent pursuant to Section 2, subsection (2) of the said Act until further order, or for such other declaration, and order in that behalf, as the Court may think fit, and for an order providing for the costs of this application.

And further Take Notice, that if you do not attend in person or by your solicitor at the time and place above mentioned, such proceedings will be taken and declaration and order made as the Court may think just.

Dated this day of , 19 .

By the Court,

Registrar.

To (*the respondent, naming him*).

8.

Order on Application for Order of Suspension and Declaration relating to Increase of Rent, under Section 2, *subsection* (2).

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

On the application of , and upon hearing ,

The Court being satisfied that certain premises [*or* of part, that is to say (*here specify the part*) of certain premises] to which the said Act applies, situate at , and known as , of which the applicant [or where the Sanitary Authority is the applicant state the name of the tenant] is the tenant, and the respondent is the landlord, are not in all respects reasonably fit for human habitation *or* are not in a reasonable state of repair] and that the condition of the premises is not due to the tenant's neglect, or default, or

breach of express agreement doth declare accordingly and doth order, pursuant to Section 2, subsection (2) of the said Act that the increase of rent of be suspended until respondent, upon notice of application in that behalf, shall have satisfied the Court that the necessary repairs (other than the repairs, if any, for which the tenant is liable) have been executed [*or* (such other declaration or order as the Court thinks fit)].

[*Or* it is ordered that the application of the said be, and the same is hereby dismissed.]

[*Add order as to costs, if any: see Form* 6.]

Dated this day of , 19 .

By the Court,
Registrar.

To (*the applicant and respondent, naming them*).

9.

Notice of the Application under Section 5, *subsection* (2) *or* (3) *for Stay, Suspension, Discharge, Rescission, or Variation of Order, or Judgment.*

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

In the County Court of , holden at .

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

Take Notice, that the applicant, A.B., [*or* the respondent, C.D.,] intends to apply to the Judge of this Court on , the day of , 19 , at the hour of in the noon, to stay, [suspend, discharge, rescind *or* vary] the order [*or* judgment] made [*or* given] in this matter on the day of , 19 , whereby it was ordered [*or* adjudged] that (*here recite order or judgment*), and for an order providing for the costs of this application.

And further Take Notice, that the grounds of my intended application are that

(here set out circumstances)

Dated this day of , 19 .

(Signed)

Applicant [*or* Respondent],
[*or* Applicant's [*or* Respondent's] Solicitor].

To *(the respondent or applicant, naming him)*,

and to Messrs.
his solicitors,

and to the Registrar of the Court.

10.

Order on Application under Section 5, subsection (2) or (3) for Stay, Suspension, Discharge, Rescission, or Variation of Order or Judgment.

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

In the County Court of , holden at .

No. of Application .

Between

A.B.
(address and description) Applicant,

and

C.D.
(address and description) Respondent.

On the application of for the stay, suspension [discharge, rescission *or* variation] of the order made [*or* judgment given] in this matter on the day of , 19 , whereby it was ordered [*or* adjudged] that

(here recite order or judgment)

and upon hearing

It is ordered that the said order [*or* judgment] be and the same is hereby stayed, suspended [*or* discharged *or* rescinded *or* varied] as follows:—

(here set out terms of order)

[*Or,* It is ordered that the application of the said be and the same is hereby dismissed.]

[*Add order as to costs, if any:* see Form 7.]

Dated this day of , 19 .

By the Court,

Registrar.

To (*the applicant and the respondent, naming them*).

11.

Summons on Application for Determination of Question or Declaration and Order under Section 9.

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

TAKE NOTICE, that you are hereby summoned to attend this Court on , the day of , at the hour of in the noon, on the hearing of an application on the part of , of , the particulars of which are hereunto annexed.

AND FURTHER TAKE NOTICE, that if you do not attend in person or by your solicitor at the time and place above mentioned, such proceedings will be taken and order made as the Court may think just.

Dated this day of , 19 .

By the Court,

Registrar.

To (*the respondent, naming him*).

PARTICULARS.

[*To be appended or annexed to summons and, if on separate paper, with heading as in summons.*]

1. On or about the day of , 19 , the respondent let certain premises [*or* a part, that is to say (*here specify the part*) of certain premises] to which the said Act applies, situate at , and known as , to the applicant at a rent of a week [*or* a month, *or as the case may be*] , which rent includes payment in respect of furniture.

2. The applicant alleges that the rent charged for the premises so let to him is yielding, or will yield, to the respondent a profit more than 25 per cent. in excess of the profit which might reasonably have been obtained from a similar letting in the year ending on the 3rd day of August, 1914.

3. The applicant therefore applies to the Court under section 9 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920—

(a) for a declaration that it is proved to the satisfaction of the Court that the rent charged on the letting of the said premises by the respondent to the applicant is yielding, or will yield, to the respondent a profit more than 25 per cent. in excess of the profit which might reasonably have been obtained from a similar letting in the year ending on the 3rd day of August, 1914, and for an assessment by the Court of the amount of such last-mentioned profit; and

(b) for an order that the said rent, so far as it exceeds such sum as would yield such last-mentioned profit and 25 per cent. thereon, shall be irrecoverable; and

(c) for an order that the amount of any payment of rent in excess of such sum made by the applicant in respect of any period after the passing of the said Act shall be repaid to the applicant, and may, without prejudice to any other mode of recovery, be recovered by the applicant by means of deductions from any subsequent payment of rent; and

(d) for an order providing for the costs of this application.

Dated this day of , 19 .

Applicant
[*or* Applicant's Solicitor].

12.

Order on Application under Section 9.

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

On the application of for an order under section 9 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, and upon hearing ,

The Court doth declare that it is proved to its satisfaction that the rent charged on the letting by the respondent to the applicant of certain premises [*or* a part, that is to say (*here specify the part*) of certain premises] to which the said Act applies, situate at , and known as , at a rent of a week [*or* a month, *or as the case may be*], which rent includes payment in respect of the use of furniture, is yielding, or will yield, to the respondent a profit more than 25 per cent. in excess of the profit which might reasonably have been obtained from a similar letting in the year ending on the 3rd day of August, 1914, which last-mentioned profit is hereby assessed by the Court at the sum of a week [*or* a month, *or as the case may be*].

And it is ordered that the said rent to the extent of a week [*or as the case may be*] being the amount by which the said rent exceeds the sum of per week [*or as the case may be*] , which would yield such last-mentioned profit and 25 per cent. thereon, shall be irrecoverable.

And it is further ordered that the sum of , being the amount of the payments of rent in excess of the said sum of per week (*or as the case may be*) made by the applicant in respect of the period of the said letting after the passing of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, shall be repaid to the applicant, and may, without prejudice to any other method of recovery, be recovered by the applicant by means of deductions from any subsequent payments of rent.

[*Add, if so ordered,*

And it is ordered that the respondent do pay the said sum of to the applicant on the day of [*or* by instalments of for every days, the first payment to be made on the day of].]

[*Add also, if so ordered,*

And it is ordered that the respondent do on or before the day of pay to the applicant his costs of this application, which are hereby allowed at the sum of .]

[*Or, if application fails,*

On the application of for an order under section 9 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, and upon hearing

It is ordered that the said application be and the same is hereby dismissed.

[*Add directions, if any, as to costs*

].]

Dated this day of , 19 .

By the Court,

Registrar.

To (*the applicant and respondent, naming them*).

13 and 14.

For summons and order for leave to distrain adapt forms 5 and 6 under the Consolidated County Courts (Emergency Powers) Rules, 1918.

15.

Summons for Declaration and Order relating to payment of Compensation under Section 5, subsection (6).

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

To
of

TAKE NOTICE, that you are hereby summoned to attend this Court on the day of , at the hour of in the noon, on the hearing of an application under Section 5, subsection (6) of the said Act, on the part of of , for a declaration that the order [*or* judgment] dated the day of , and made [*or* given] in an action in this Court

(*here give title of action*)

for possession of [*or* ejectment from] certain premises [*or* of part, that is to say,

(*here specify the part*)

of certain premises]
to which the said Act applies, situate at , and known as , of which the applicant was the tenant, and you the respondent were the landlord, was obtained by misrepresentation [*or* the concealment of material facts] and that the applicant is entitled to recover from you compensation for damage or loss sustained by him as the result of the said order [*or* judgment], and for an order ordering you to pay the sum of £ [*or* such sum as shall appear to the Court sufficient] as compensation for such damage or loss, or for such other declaration and order in that behalf as the Court may think fit, and for an order providing for the costs of this application.

AND FURTHER TAKE NOTICE, that if you do not attend in person or

by your solicitor at the time and place above-mentioned, such proceedings will be taken and declaration and order made as the Court may think just.

Dated this day of , 19 .

By the Court,

To (*the respondent, naming him*). Registrar.

16.

Order on Application for Declaration and Order relating to Payment of Compensation under Section 5, subsection (6).

In the County Court of , holden at .

In the Matter of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

No. of Application .

Between

A.B.
(*address and description*) Applicant,

and

C.D.
(*address and description*) Respondent.

On the application of and upon hearing

The Court doth declare and adjudge that the order [*or* judgment] dated the day of , and made [*or* given] in an action in this Court (*here give title of action*) , for possession of [*or* ejectment from] certain premises [*or* of part, that is to say (*here specify the part*) of certain premises] to which the said Act applies, situate at , and known as , of which the applicant was the tenant, and the respondent was the landlord, was obtained by misrepresentation [*or* the concealment of material facts], and that the applicant is entitled under Section 5, subsection (6) of the said Act to recover against the respondent the sum of £ as compensation for damage or loss sustained by the applicant as the result of the said order [*or* judgment] and it is ordered that the respondent do pay the said sum of £ to the Registrar of this Court on the day of , [*or* it is ordered that the application of the said be, and the same is hereby dismissed].

[*Add order as to costs if any: see Form* 6].

Dated this day of , 19 .

By the Court,

To (*the applicant and respondent, naming them*). Registrar.

APPENDIX II.

INCREASE OF RENT AND MORTGAGE INTEREST (WAR RESTRICTIONS) ACT, 1915.

5 & 6 GEO. 5, c. 97.

An Act to restrict, in connection with the present War, the Increase of the Rent of Small Dwelling-houses and the Increase of the Rate of Interest on, and the Calling in of, Securities on such Dwelling-houses. [23rd December, 1915.

1. *Restriction on raising rent or rate of mortgage interest.*—(1) Where the rent of a dwelling-house to which this Act applies, or the rate of interest on a mortgage to which this Act applies, has been, since the commencement of the present war, or is hereafter during the continuance of this Act, increased above the standard rent or the standard rate of interest as herein-after defined, the amount by which the rent or interest payable exceeds the amount which would have been payable had the increase not been made shall, notwithstanding any agreement to the contrary, be irrecoverable:

Provided that—

(i) This subsection shall not apply to any rent or mortgage interest which accrued due before the twenty-fifth day of November nineteen hundred and fifteen; and

(ii) Where the landlord has since the commencement of the present war incurred, or during the continuance of this Act incurs, expenditure on the improvement or structural alteration of a dwelling-house (not including expenditure on decoration or repairs), an increase of rent at a rate not exceeding six per cent. per annum on the amount so expended shall not be deemed to be an increase for the purposes of this Act; and

(iii) Any transfer to a tenant of any burden or liability previously borne by the landlord shall for the purposes of this Act be treated as an alteration of rent, and where, as the result of such a transfer, the terms on which a dwelling-house is held are on the whole less favourable to the tenant than the previous terms the rent shall be deemed to be increased, whether or not the sum periodically pay-

able by way of rent is increased, and any increase of rent in respect of any transfer to a landlord of any burden or liability previously borne by the tenant where, as the result of such transfer, the terms on which a dwelling-house is held are on the whole more favourable to the tenant than the previous terms shall be deemed not to be an increase of rent for the purposes of this Act, and if any question arises under this proviso the question shall be determined by the county court, whose decision shall be final and conclusive; and

(iv) Where the landlord pays the rates chargeable on, or which but for the enactments relating to compounding would be chargeable on, the occupier of any dwelling-house, an increase of the rent of the dwelling-house shall not be deemed to be an increase for the purposes of this Act if the amount of the increase does not exceed any increase in the amount for the time being payable by the landlord in respect of such rates over the corresponding amount paid in respect of the yearly, half yearly or other period which included the third day of August nineteen hundred and fourteen, and for the purposes of this proviso the expression "rates" includes water rents and charges; and

(v) Where the rate of mortgage interest has been increased in compliance with, or in consequence of, a notice in writing demanding either repayment of the mortgage or an increased rate of interest given prior to the fourth day of August nineteen hundred and fourteen, such increase shall not be deemed to be an increase for the purposes of this Act; and

(vi) Wherever an increase of rent is by this Act permitted, no such increase shall be due or recoverable until the expiry of four clear weeks after the landlord has served upon the tenant a notice in writing of his intention to increase the rent, accompanied—

(a) where the increase of rent is on account of such expenditure as is mentioned in proviso (ii) to this subsection, by a statement of the improvements or alterations effected and of their cost; and

(b) where the increase of rent is on account of an increase in rates, by a statement showing particulars of the increased amount charged in respect of rates on the dwelling-house; and

(c) where such a notice has been served on any tenant the increase may be continued without service of any fresh notice on any subsequent tenant.

(2) A person shall not in consideration of the grant, renewal, or continuance of a tenancy of any dwelling-house to which this Act applies require the payment of any fine, premium, or other like sum in addition to the rent, and where any such payment has been made

in respect of any such dwelling-house after the twenty-fifth day of November nineteen hundred and fifteen, then the amount shall be recoverable by the tenant by whom it was made from the landlord, and may without prejudice to any other method of recovery be deducted from any rent payable by him to the landlord, but this provision shall not apply to any payment under an agreement entered into before the fourth day of August nineteen hundred and fourteen.

(3) No order for the recovery of possession of a dwelling-house to which this Act applies or for the ejectment of a tenant therefrom shall be made so long as the tenant continues to pay rent at the agreed rate as modified by this Act and performs the other conditions of the tenancy, except on the ground that the tenant has committed waste or has been guilty of conduct which is a nuisance or an annoyance to adjoining or neighbouring occupiers, or that the premises are reasonably required by the landlord for the occupation of himself or some other person in his employ, or in the employ of some tenant from him, or on some other ground which may be deemed satisfactory by the court making such order, and where such order has been made but not executed before the passing of this Act the court by which the order was made may, if it is of opinion that the order would not have been made if this Act had been in operation at the date of the making of the order, rescind or vary the order in such manner as the court may think fit for the purpose of giving effect to this Act.

(4) It shall not be lawful for any mortgagee under a mortgage to which this Act applies, during the continuance of this Act, and so long as interest at the standard rate is paid and is not more than twenty-one days in arrear, and the covenants by the mortgagor (other than the covenant for the repayment of the principal money secured) are performed and observed, and so long as the mortgagor keeps the property in a proper state of repair and pays all interest and instalments of principal recoverable under any prior encumbrance, to call in his mortgage or to take any steps for exercising any right of foreclosure or sale, or for otherwise enforcing his security or for recovering the principal money thereby secured:

Provided that this provision shall not apply to a mortgage where the principal money secured thereby is repayable by means of periodical instalments extending over a term of not less than ten years from the creation of the mortgage, nor shall this provision affect any power of sale exerciseable by a mortgagee who was at the twenty-fifth day of November nineteen hundred and fifteen a mortgagee in possession, or in cases where the mortgagor consents to the exercise by the mortgagee of the powers conferred by the mortgage:

Provided also that if, in the case of a mortgage of a leasehold interest, the mortgagee satisfies the county court that his security is seriously diminishing in value or is otherwise in jeopardy, and that for that reason it is reasonable that the mortgage should be

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called in and enforced, the court may by order authorise him to call in and enforce the same, and thereupon this subsection shall not apply to such mortgage.

2. *Interpretation and application.*—(1) For the purposes of this Act except where the context otherwise requires:—

(a) The expression "standard rent" means the rent at which the dwelling-house was let on the third day of August nineteen hundred and fourteen, or, where the dwelling-house was not let on that date, the rent at which it was last let before that date, or, in the case of a dwelling-house which was first let after the said third day of August, the rent at which it was first let:

(b) The expression "standard rate of interest" means in the case of a mortgage in force on the third day of August nineteen hundred and fourteen, the rate of interest payable at that date, or, in the case of a mortgage created since that date, the original rate of interest:

(c) The expression "rateable value" means the rateable value on the third day of August nineteen hundred and fourteen, or, in the case of a house or part of a house first assessed after that date, the rateable value at which it was first assessed:

(d) The expressions "landlord," "tenant," "mortgagee," and "mortgagor" include any person from time to time deriving title under the original landlord, tenant, mortgagee, or mortgagor:

(e) The expression "mortgage" includes a land charge under the Land Transfer Acts, 1875 and 1897.

(2) This Act shall apply to a house or a part of a house let as a separate dwelling where such letting does not include any land other than the site of the dwelling-house and a garden or other premises within the curtilage of the dwelling-house, and where either the annual amount of the standard rent or the rateable value of the house or part of the house does not exceed—

(a) in the case of a house situate in the metropolitan police district, including therein the City of London, thirty-five pounds;

(b) in the case of a house situate in Scotland, thirty pounds; and

(c) in the case of a house situate elsewhere, twenty-six pounds;

and every such house or part of a house shall be deemed to be a dwelling-house to which this Act applies: Provided that this Act shall not apply to a dwelling-house let at a rent which includes payments in respect of board, attendance, or use of furniture.

(3) Where, for the purpose of determining the standard rent or rateable value of a dwelling-house to which this Act applies, it is necessary to apportion the rent at the date in relation to which the standard rent is to be fixed or the rateable value of the pro-

perty in which that dwelling-house is comprised, a county court may, on application by either party, make such apportionment as seems just, and the decision of the court as to the amount to be apportioned to the dwelling-house shall be final and conclusive.

(4) Subject to the provisions of this Act, this Act shall apply to every mortgage where the mortgaged property consists of or comprises one or more dwelling-houses to which this Act applies, or any interest therein except that it shall not apply—

(a) to any mortgage comprising one or more dwelling-houses to which this Act applies and other land if the rateable value of such dwelling-houses is less than one-tenth of the rateable value of the whole of the land comprised in the mortgage, or

(b) to an equitable charge by deposit of title deeds or otherwise.

(5) Where this Act has become applicable to any dwelling-house or any mortgage thereon it shall continue to apply thereto whether or not the dwelling-house continues to be a dwelling-house to which this Act applies.

(6) Where the standard rent payable in respect of any tenancy of a dwelling-house is less than two-thirds of the rateable value thereof, this Act shall not apply to that rent or tenancy nor to any mortgage by the landlord from whom the tenancy is held of his interest in the dwelling-house.

3. *Rules as to procedure.*—The Lord Chancellor may make such rules and give such directions as he thinks fit for the purpose of giving effect to this Act, and may by those rules or directions provide for any proceedings for the purposes of this Act being conducted so far as desirable in private and for the remission of any fees.

4. *Application to Scotland and Ireland.*—(1) This Act shall apply to Scotland, subject to the following modifications:—

"Mortgage and incumbrance" mean a heritable security; "fine" means grassum or consideration other than rent; "mortgagor" and "mortgagee" mean respectively the debtor and the creditor in a heritable security; "covenant" means obligation; "mortgaged property" means the heritable subject or subjects included in a heritable security; "rateable value" means yearly value according to the valuation roll; "rateable value on the third day of August nineteen hundred and fourteen" means yearly value according to the valuation roll for the year ending fifteenth day of May nineteen hundred and fifteen; "assessed" means entered in the valuation roll; "committed waste" means "wilfully destroyed the property"; "land" means lands and heritages; "enactments relating to compounding" include the House-letting and Rating (Scotland) Act, 1911; "rate" means assessment as defined in the last-mentioned Act; "Lord Chancellor" means the Court of Session; "rules" means act of sederunt; and "county court" means the sheriff.

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(2) This Act shall apply to Ireland subject to the following modifications:—

(a) A reference to the Lord Chancellor of Ireland shall be substituted for the reference to the Lord Chancellor;

(b) The expression "mortgage" includes a charge by registered disposition under the Local Registration of Title (Ireland) Act, 1891;

(c) The expression "rateable value" means the annual rateable value under the Irish Valuation Acts: Provided that where part of a house let as a separate dwelling is not separately valued under those Acts, the Commissioner of Valuation and Boundary Surveyor may on the application of the landlord or tenant make such apportionment of the rateable value of the whole house as seems just, and his decision as to the amount to be apportioned to the part of the house shall be final and conclusive, and that amount shall be taken to be the rateable value of the part of the house for the purposes of this Act but not further or otherwise.

5. *Short title and duration.*—(1) This Act may be cited as the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

(2) This Act shall continue in force during the continuance of the present war and for a period of six months thereafter and no longer, but the expiration of this Act shall not render recoverable any rent or interest which during the continuance thereof was irrecoverable or affect the right of a tenant to recover any sum which during the continuance thereof was under this Act recoverable by him.

COURTS (EMERGENCY POWERS) ACT, 1917.

7 & 8 Geo. 5, c. 25.

4. *Power to accept premiums on leases for twenty-one years or upwards.*—(1) Subsection (2) of section one of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, shall not apply to a lease of a dwelling-house for a term of twenty-one years or upwards.

(2) Section two of the Courts (Emergency Powers) (No. 2) Act, 1916, is hereby repealed.

5. *Provisions as to sums made irrecoverable by 5 & 6 Geo. 5, c. 97.*—(1) Where any sum has, whether before or after the passing of this Act, been paid on account of any rent or mortgage interest, being a sum which by virtue of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, would have been irrecoverable by the landlord or mortgagee, the sum so paid shall at any time within six months after the date of payment, or, in the case of a payment made before the passing of this Act, within six months after the passing thereof, be recoverable from the landlord

or mortgagee who received the payment or his legal personal representative by the tenant or mortgagor by whom it was paid, and may, without prejudice to any other method of recovery, be deducted by such tenant or mortgagor from any rent or interest payable within such six months by him to such landlord or mortgagee.

(2) If any person in any rent book or similar document makes an entry showing or purporting to show any tenant as being in arrear in respect of any sum which by virtue of the said Act is irrecoverable, or if, where any such entry has before the passing of this Act been made by or on behalf of any landlord, the landlord, on being requested by or on behalf of the tenant so to do, refuses or neglects to delete the entry, he shall on summary conviction be liable to a fine not exceeding ten pounds.

(3) This section shall be construed as one with the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.

7. *Provision as to leases at less than rack rent.*—In subsection (6) of section two of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, which relates to tenancies at less than rack rent, the word "standard" shall be omitted, and at the end of the subsection there shall be inserted the following words "and this Act shall apply in respect of such dwelling-house "as if no such tenancy existed or had ever existed."

INCREASE OF RENT, &c. (AMENDMENT) ACT, 1918.

8 GEO. 5, c. 7.

1. *Restriction of meaning of landlord in 5 & 6 Geo. 5. c. 97, s. 1 (3).*—Subsection (3) of section one of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, shall have effect as if at the end thereof the following provision was inserted:—

> "For the purposes of this subsection the expression 'landlord' shall not include any person who since the thirtieth day of September nineteen hundred and seventeen has become landlord by the acquisition of the dwelling-house or any interest therein otherwise than by the devolution thereof to him under a settlement made before the said date, or under a testamentary disposition or an intestacy."

and the provisions of the said subsection with respect to orders made but not executed before the passing of that Act, shall apply to orders made but not executed before the passing of this Act, as if this Act had been substituted for that Act in the said subsection:

Provided that this enactment shall not apply in any case where the Court is satisfied by certificate given by or on behalf of the Board of Agriculture and Fisheries (or as regards premises in Scotland by the Board of Agriculture for Scotland, or in Ireland the Department of Agriculture and Technical Instruction for Ireland) that the premises in question are required for the occupa-

tion of a person engaged or employed in agricultural work of urgent national importance.

2. *Short title.*—This Act may be cited as the Increase of Rent, &c. (Amendment) Act, 1918.

INCREASE OF RENT AND MORTGAGE INTEREST (RESTRICTIONS) ACT, 1919.

9 Geo. 5, c. 7.

An Act to extend, amend and prolong the duration of the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, and the enactments amending that Act. [2nd April, 1919.

1. *Prolongation of duration of principal Act.*—The Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915 (hereinafter referred to as the "principal Act"), and the enactments amending that Act, shall continue in force until Lady Day nineteen hundred and twenty-one, but during the period (hereinafter referred to as "the extended period") between the time when but for this Act the principal Act would have expired and the said Lady Day the principal Act shall have effect subject to the modifications contained in the two next succeeding sections.

2. *Limited power of increasing rents during the extended period.*—(1) An increase in the rent of a dwelling-house to which the principal Act applies payable in respect of the extended period or any part thereof which would but for the principal Act be recoverable, shall be recoverable if or so far as the amount of the increase does not exceed ten per centum of the standard rent:

Provided that no such increase shall be due or recoverable if the sanitary authority of the district in which the house is situate on the application of the tenant certifies that the house is not reasonably fit for human habitation or is not kept in a reasonable state of repair, nor in any case until or in respect of any period prior to the expiry of four clear weeks after the landlord has served upon the tenant a notice in writing of his intention to increase the rent, and informing the tenant of his right to apply to the sanitary authority for such a certificate as aforesaid.

(2) On any such application to a sanitary authority a fee of one shilling shall be payable, but if the authority, as a result of the application, issues such a certificate as aforesaid the tenant shall be entitled to deduct the amount of the fee from any subsequent payment of rent.

(3) The increase of rent permitted by this section shall be in addition to any increase permitted by section one of the principal Act.

3. *Limited power of increasing rate of mortgage interest.*—Nothing in the principal Act shall prevent an increase in the rate of interest payable in respect of the extended period on a mortgage

to which the principal Act applies, if the increase does not exceed one half per centum per annum, and the rate when so increased does not exceed five per centum per annum, and subsection (4) of section one of the principal Act shall apply as if the reference therein to the standard rate included a reference to such increased rate.

4. *Extension of principal Act to higher-rented houses.*—As from the passing of this Act, the principal Act and the enactments amending that Act shall extend to houses or parts of houses let as separate dwellings where such letting does not include any land other than the site of the dwelling-house and a garden or other premises within the curtilage of the dwelling-house, and where—

(a) in the case of a house situated in the metropolitan police district, including the City of London, both the annual amount of the standard rent and the rateable value of the house or part of the house exceed thirty-five pounds, and neither exceeds seventy pounds;

(b) in the case of a house situated in Scotland, both the annual amount of the standard rent and the rateable value of the house or part of the house exceed thirty pounds, and neither exceeds sixty pounds;

(c) in the case of a house situated elsewhere, both the annual amount of the standard rent and the rateable value of the house or part of the house exceed twenty-six pounds, and neither exceeds fifty-two pounds;

and shall also extend to mortgages (not being mortgages to which the principal Act as originally enacted applies), where the mortgaged property consists of or comprises one or more of such dwelling-houses as aforesaid or any interest therein, subject, however, to the exceptions mentioned in subsection (4) of section two of the principal Act, but in the application to those houses and mortgages the principal Act and the enactments amending that Act shall have effect, subject to the following modifications:—

(i) for subsection (1) of section one of the principal Act, exclusive of the provisoes to that subsection, the following provisions shall be substituted:—

> Where the rent of a dwelling-house to which this Act applies or the rate of interest on a mortgage to which this Act applies has been since the twenty-fifth day of December nineteen hundred and eighteen, or is hereafter increased and such increase would apart from this Act have been recoverable, then, if the increased rent exceeds by more than ten per centum the standard rent, or the increased rate of interest exceeds by more than one half per centum per annum the standard rate, the amount of such excess above the said ten per centum or one half per centum, as the case may be, shall, notwithstanding any agreement to the contrary, be irrecoverable from the tenant or the mortgagor, as the case may be, and, if paid, may be recovered by the tenant or mortgagor in

the manner and subject to the provisions of subsection (1) of section five of the Courts (Emergency Powers) Act, 1917;

(ii) in proviso (i) to subsection (1) and subsections (2) and (4) of section one of the principal Act the fourth day of March nineteen hundred and nineteen shall be substituted for the twenty-fifth day of November nineteen hundred and fifteen;

(iii) in subsection (3) of section one of the principal Act references to the date of the passing of the principal Act shall be construed as references to the date of passing of this Act;

(iv) in subsection (4) of section one of the principal Act for the reference to the standard rate there shall be substituted a reference to the rate permitted by this section;

(v) at the end of paragraph (a) of subsection (1) of section two of the principal Act there shall be inserted the following proviso:—

Provided that, if the rateable value of the dwelling-house on the said third day of August exceeds the standard rent as so defined, that rateable value shall, as respects that house, be deemed to be the standard rent.

5. *Minor amendments of the principal Act.*—(1) A landlord of a house to which the principal Act, either as originally enacted or as extended by this Act, applies shall, on being so requested by the tenant of the house, furnish to him a statement as to what is the standard rent of the house, and if he fails within fourteen days to do so, or furnishes a statement which is false in any material particular, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding ten pounds.

(2) Where a person who has, since the thirtieth day of September nineteen hundred and seventeen, purchased a house to which the principal Act, either as originally enacted or as extended by this Act, applies, requires the house for his own occupation or that of some person in his employ, or in the employ of some tenant from him, nothing in the Increase of Rent, &c. (Amendment) Act, 1918, shall be construed as preventing the court from making an order for the recovery of possession of the house, if, after considering all the circumstances of the case, including especially the alternative accommodation available for the tenant, the court considers it reasonable to make such an order.

(3) The principal Act, both as originally enacted and as extended by this Act, shall have effect as if in proviso (vi) to subsection (1) of section one of that Act after the word "until" there were inserted the words "or in respect of any period prior to."

(4) Any rooms in a dwelling-house the subject of a separate letting as a dwelling shall, for the purposes of the principal Act and this Act, be treated as a part of a house let as a separate dwelling.

6. *Limitation on rent of houses let furnished.*—(1) Where the occupier of a dwelling-house to which the principal Act, either as originally enacted or as extended by this Act, applies, lets, or has, before the passing of this Act, let the house or any part thereof at a rent which includes payment in respect of the use of furniture, and it is proved to the satisfaction of the county court on the application of the lessee that the rent charged yields to the occupier a profit more than twenty-five per centum in excess of the normal profit as hereinafter defined, the court may order that the rent, so far as it exceeds such sum as would yield such normal profit and twenty-five per centum, shall be irrecoverable, and that the amount of any payment of rent in excess of such sum which may have been made in respect of any period after the passing of this Act, shall be repaid to the lessee, and, without prejudice to any other method of recovery, may be recovered by him by means of deductions from any subsequent payments of rent.

(2) For the purpose of this section "normal profit" means the profit which might reasonably have been obtained from a similar letting in the year ending on the third day of August, nineteen hundred and fourteen.

7. *Amendment of definition of standard rent.*—At the end of paragraph (a) of subsection (1) of section two of the principal Act, the following words shall be inserted:—

Provided that, in the case of any dwelling-house let at a progressive rent payable under a tenancy agreement or lease, the maximum rent payable under such tenancy agreement or lease shall be the standard rent.

8. *Exception of new houses.*—Neither the principal Act nor this Act shall apply to houses erected after or in course of erection at the passing of this Act.

9. *Application of Act to Scotland.*—In the application of this Act to Scotland –

(a) the twenty-eighth day of May shall be substituted for Lady Day and the local authority under the Public Health (Scotland) Act, 1897, shall be substituted for the sanitary authority;

(b) as from the commencement of the extended period the principal Act shall be amended by the insertion in proviso (iv) of subsection (1) of section one, after the word "dwelling-house" where first occurring therein, of the words "or where by the law of Scotland owners' rates are chargeable on the landlord of any dwelling-house."

10. *Application of Act to Ireland.*—In the application of this Act to Ireland—

(a) the first day of May shall be substituted for Lady Day in the case of tenancies where the former day is the gale day;

(b) the medical officer of health of a dispensary district shall be substituted for the sanitary authority in section two

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of this Act, and the issue of certificates and the payment of fees in connexion with applications by tenants under the said section shall be subject to regulations to be made by the Local Government Board for Ireland.

11. *Short title and construction.*—This Act may be cited as the Increase of Rent and Mortgage Interest (Restrictions) Act, 1919, and shall be construed as one with the principal Act.

INCREASE OF RENT, &c. (AMENDMENT) ACT, 1919.

9 & 10 Geo. 5, c. 90.

1. *Orders for possession.*—(1) After the passing of this Act no order or judgment for the recovery of possession of a dwelling-house to which the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915 (hereinafter called the principal Act) or any of the Acts amending the same applies, or for the ejectment of a tenant therefrom, shall be made or given, so long as the tenant continues to pay rent at the agreed rate as modified by the principal Act or any of the Acts amending the same and performs the other conditions of the tenancy, unless—

(a) the tenant has committed waste or has been guilty of conduct which is a nuisance or an annoyance to adjoining or neighbouring occupiers, and the court considers it reasonable to make such an order or give such judgment; or

(b) the tenant, by sub-letting the dwelling-house or any part thereof, or by taking in lodgers, is making a profit which, having regard to the rent paid by the tenant, is unreasonable, and the court considers it reasonable to make such an order or give such judgment; or

(c) the premises are reasonably required by the landlord for the occupation of himself or some other person in his employ, or in the employ of some tenant from him, and the court, after considering all the circumstances of the case, including especially the alternative accommodation available for the tenant, considers it reasonable to make such an order or give such judgment.

(2) At the time of making any order or giving any judgment for the recovery of possession of any such dwelling-house or for the ejectment of a tenant therefrom, or in the case of any such order or judgment which has been made or given, whether before or after the passing of this Act, and not executed, at any subsequent time, the court may, if the order or judgment was made or given on the ground that the premises were reasonably required as aforesaid, stay or suspend execution thereof, or postpone the date of possession, for such period or periods as it shall think fit,

either unconditionally or subject to such conditions in regard to payment by the tenant of rent or mesne profits and otherwise as the court shall think fit, and, if such conditions are complied with, the court may, if it shall think fit, discharge or rescind such order or judgment.

(3) Where any order or judgment has been made or given before the passing of this Act, but not executed, and in the opinion of the court the order or judgment would not have been made or given if this Act had been in force at the time when such order or judgment was made or given, the court may, on application by the tenant, rescind or vary such order or judgment in such manner as the court may think fit for the purpose of giving effect to this Act.

(4) Notwithstanding anything in section one hundred and forty-three of the County Courts Act, 1888, every warrant for delivery of possession of a dwelling-house to which the principal Act or any Act amending the same applies, shall remain in force for three months from the day next after the last day named in the judgment or order for delivery of possession or ejectment, and for such further period or periods, if any, as the court shall from time to time, whether before or after the expiration of such three months, direct.

(5) This Act shall not apply to a dwelling-house let at a rent which includes payments in respect of board, attendance, or use of furniture.

(6) In the application of this section to Scotland a reference to profits shall be substituted for the reference to mesne profits.

2. *Short title, construction and repeal.*—(1) This Act may be cited as the Increase of Rent, &c. (Amendment) Act, 1919, and shall remain in force until the first day of July nineteen hundred and twenty, and shall be construed as one with the principal Act.

(2) The enactments set out in the schedule to this Act are hereby repealed to the extent specified in the third column of that schedule.

SCHEDULE.

Session and Chapter.	Short Title.	Extent of Repeal.
5 & 6 Geo. 5, c. 97.	Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915.	S. 1 (3).
8 Geo. 5, c. 7	Increase of Rent, &c. (Amendment) Act, 1918	The whole Act.
9 Geo. 5, c. 7	Increase of Rent and Mortgage Interest Restrictions) Act, 1919.	S. 5 (2).

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